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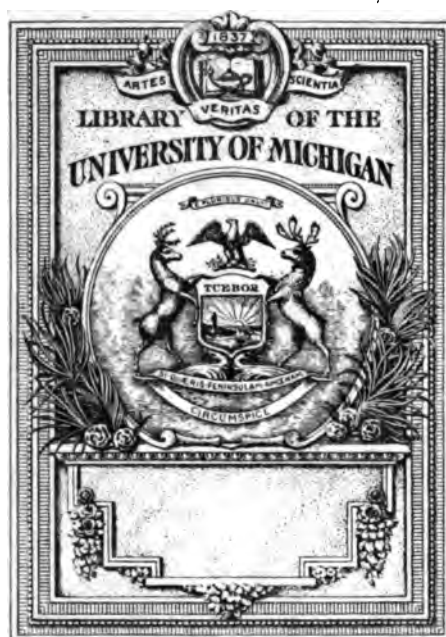
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US INTERSTATE COMMERCE COMMISSION (REPORTS)

VOLUME XXXIX

DECISIONS OF THE
INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES

APRIL, 1916, TO MAY, 1916

REPORTED BY THE COMMISSION



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INTERSTATE COMMERCE COMMISSION.

BALTHASAR H. MEYER, *Chairman.*

JUDSON C. CLEMENTS.

EDGAR E. CLARK.

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CHARLES C. McCHORD.

HENRY C. HALL.

WINTHROP M. DANIELS.

GEORGE B. MCGINTY, *Secretary.*

INTERSTATE COMMERCE COMMISSION REPORTS.

SENATE RESOLUTION No. 364 OF MAY 16, 1914, IN RE RELATIONS BETWEEN CARRIERS BY RAIL AND CAR- RIERS BY WATER.

April 11, 1916.

Data submitted show the corporate interest of railroads in vessels or steamship lines and the vessels owned or operated by railroads.

REPORT TO THE SENATE OF THE UNITED STATES.

BY THE COMMISSION:

In a resolution of the Senate dated May 16, 1914, the Commission was requested to ascertain, by requiring special reports of rail lines, coastwise vessel lines, and of such other lines as in the judgment of the Commission seemed advisable:

First. (a) To what extent vessels and steamship lines are engaged in transporting freight between Atlantic and Pacific ports and in the coastwise trade of the United States, wholly by water, or partly by water and partly by rail, under the joint ownership, common control, community of interest or otherwise, with railroad companies; and

(b) What vessels or steamship lines are so owned and controlled, and the names of the owners, stockholders, trustees, holding companies, directors and officers of all steamship lines and railroad companies engaged in the coastwise and foreign trade of the United States; and to what extent they are consolidated, directed, or operated by and through holding companies, interlocking stock, interlocking directorates, or interlocking officers.

Second. (a) The prevailing rates upon the principal commodities carried between Atlantic and Pacific ports of the United States wholly by water or partly by water and partly by rail across the Isthmus of Panama or Tehuantepec, and the prevailing rates between the same points wholly by rail; and

(b) The prevailing rates upon similar commodities transported under like conditions wholly by water by vessels not under United States registry for distances similar to the distance between the Atlantic and Pacific ports of the United States.

Third. The prevailing rates upon the principal commodities carried by vessels in the coastwise trade of the United States as compared with the rates on similar commodities for similar distances carried by vessels in the foreign trade of the United States; and

Fourth. The prevailing rates upon similar commodities transported wholly by water by vessels not under United States registry for similar distances under similar conditions as compared with the rates in the coastwise trade of the United States.

Accordingly, the inquiry was pursued through the medium of two forms of special report series circulars which were mailed to individuals, firms, and corporations engaged in the business of transporting freight and in which each individual firm or corporation addressed was directed to make full and true answers to the interrogatories propounded. One form of circular was mailed to each of 1,148 railroads and the other form to each of 841 carriers engaged in transportation by water. Of the latter, 17 were railroads whose transportation by water was conducted as an auxiliary operation; 646 were firms or corporations engaged solely in coastwise or inland water commerce, and 178 were firms or corporations engaged in water commerce involving the foreign trade of the United States.

It developed from the attested returns made that the circular of inquiry was inapplicable with respect to 1,033 rail and water lines and they were therefore returned unanswered by those carriers. The circulars addressed to 69 rail and water lines were returned unanswered or undelivered, apparently because the companies addressed were no longer conducting their operations. Of the carriers addressed, 550 made no return at all. As to these latter companies our records disclosed that 157 were railroads performing only a road-haul service; that 50 were switching and terminal companies; that 252 were domestic carriers by water; and that 91 were foreign carriers by water. The 157 nonreporting rail carriers are largely located in interior territory and their operations are relatively small. Inasmuch as our files fail to disclose any corporate or other relations with carriers by water it was deemed unnecessary to make special examinations of the nonreporting rail carriers.

It is upon the returns made by 337 reporting carriers, 170 of which are railroads and 167 carriers by water, that this report is based. These railroads represent substantially all the railway mileage operated under corporate or other relationship with water carriers. The report deals with conditions as of June 30, 1914.

CORPORATE INTEREST OF RAILROADS IN VESSELS OR STEAMSHIP LINES.

The data submitted shows that 27 railroad systems were engaged or were interested in the transportation of freight by water, either directly or indirectly through subsidiary rail line or water line carriers. These systems, with the number of vessels owned, controlled, or leased by them, and the registered tonnage of such vessels as of June 30, 1914, were:

System designation.	Names of railroad systems.	Steam vessels.		Barges.		Total of vessels.	
		No.	Gross tonnage.	No.	Gross tonnage.	No.	Gross tonnage.
A	Atlantic Coast Line Co. ¹	26	13,373			26	13,373
B	Bessemer & Lake Erie R. R. Co. ²						
C	Buffalo, Rochester & Pittsburgh Ry. Co.	41	5,146			41	5,146
D	Chesapeake & Ohio Ry. Co. ³						
E	Delaware, Lackawanna & Western R. R. ⁴	3	2,336	18	14,999	21	17,335
F	Erie & Michigan Ry. & Navigation Co.	1	523			1	523
G	Erie R. R. Co. ⁵	8	20,343	15	10,265	23	30,608
H	Florida East Coast Ry. Co. ⁶						
I	Great Northern Ry. Co. ⁷	3	29,206			3	29,206
J	Illinois Central R. R. Co.	9	43,484			9	43,484
K	Lehigh Valley R. R. Co. ⁸	12	21,233	49	28,234	61	49,467
L	Maine Central Ry. Co.	7	3,080			7	3,080
M	New York Central & Hudson River R. R. Co. ⁹	30	87,159	2	1,562	32	88,721
N	New York, New Haven & Hartford R. R. Co. ¹⁰	74	134,784	47	26,792	121	161,576
O	Norfolk & Western Ry. Co. ¹¹	3	139	6	962	9	1,101
P	Norfolk Southern R. R.	3	1,640			3	1,640
Q	Northern Pacific Ry. Co.	16	44,436	3	2,728	19	47,164
R	Pacific Coast Steamship Co.	69	73,194	33	21,928	102	95,122
S	Pennsylvania R. R. Co. ¹²	2	4,315			2	4,315
T	Pere Marquette R. R. Co.	15	8,171	87	80,736	102	88,907
U	Reading Co.	20	35,583			20	35,583
V	Seaboard Air Line Ry.	70	245,756	24	14,239	94	259,995
W	Southern Pacific Co.	8	15,428			8	15,428
X	Southern Ry. Co. ¹³	10	16,205			10	16,205
Y	Union Pacific R. R. Co.	7	19,990			7	19,990
Z 1	Canadian Pacific Ry. Co.	11	30,006			11	30,006
Z 2	Grand Trunk Ry. Co. of Canada ¹⁴						
Total.....		388	855,530	284	202,445	672	1,057,975

¹ Also interested with Chesapeake & Ohio Ry. Co., Norfolk & Western Railway Co., Seaboard Air Line Ry. Co. and Southern Ry. Co., in 15 of the 20 steam vessels, included under system V, and with Southern Ry. Co. in the eight steam vessels included under system X.

² Includes three steam vessels referred to in note 8 below.

³ Interested with Pere Marquette R. R. Co. in the two steam vessels shown under system T.

⁴ Steam vessel referred to in note 19 below.

⁵ See note 1 above.

⁶ Also interested with Erie R. R. Co., Lehigh Valley R. R. Co., and New York Central & Hudson River R. R. Co., in 12 of the 30 steam vessels included under system M.

⁷ See note 6 above.

⁸ Interested with Atlantic Coast Line Co. in three of the six steam vessels included under system A.

⁹ Also interested with Northern Pacific Ry. Co. in the three steam vessels shown under system Q.

¹⁰ Also interested with Pennsylvania R. R. Co. and Canadian Pacific Ry. Co. in two of the seven steam vessels included under system Z 1.

¹¹ Includes the 12 steam vessels referred to in note 6 above and the two steam vessels referred to in note 12 below.

¹² Also interested with New York Central & Hudson River R. R. Co. in two of the 30 steam vessels included under system M.

¹³ Steam vessels referred to in note 9 above.

¹⁴ See note 10 above. Also interested with Canadian Pacific Ry. Co. in one of the seven steam vessels included under system Z 1. Connected with the interest in water transportation of Norfolk & Western Ry. Co., and Southern Pacific Co. through stock ownership in these companies.

¹⁵ Steam vessels referred to in note 3 above.

¹⁶ Includes the 15 steam vessels referred to in note 1 above.

¹⁷ Steam vessels referred to in note 1 above.

¹⁸ Includes the two steam vessels referred to in note 10 above, and one steam vessel referred to in note 14 above.

¹⁹ Also interested with Buffalo, Rochester & Pittsburgh Ry. Co. in one steam vessel shown under system C.

VESSELS OWNED.

The 27 railroad systems named in the preceding table with their subsidiaries shown in Exhibit 1 following which were engaged in transportation by water or which had corporate interest in carriers so engaged comprised 106 separate companies; of these 46 were not engaged in the transportation of the traffic involved in the resolution; the ownership of the vessels that were operated in such traffic was vested in the other 60 carriers, of which 19 were carriers

by rail and 41 carriers by water. Further details as to the vessels owned by these carriers are:

Owning companies.	Steam vessels.			Barges.		Total of vessels.	
Class.	No.	No.	Gross tonnage.	No.	Gross tonnage.	No.	Gross tonnage.
Rail carriers.....	19	147	238,816	124	112,395	271	351,211
Water carriers.....	41	237	610,888	160	90,050	397	700,938
Total.....	60	1 384	849,704	284	202,445	1 668	1,052,149

¹ Does not include four steam vessels, gross tonnage 5,826 tons, chartered from owners not shown in Exhibit 1.

VESSELS OPERATED.

The number of vessels operated by the 27 railroad systems or their subsidiary companies on June 30, 1914, is here summarized:

Operating companies.	Steam vessels.			Barges.		Total of vessels.	
Class.	No.	No.	Gross tonnage.	No.	Gross tonnage.	No.	Gross tonnage.
Rail carriers.....	17	121	191,008	121	111,940	242	302,948
Water carriers.....	40	248	637,916	168	89,350	406	727,266
Total.....	57	369	828,924	279	201,290	1 648	1,030,214

¹ Does not include 12 steam vessels, gross tonnage 24,580 tons, and 5 barges, gross tonnage 1,155 tons, not operated on June 30, 1914, and 7 steam vessels, gross tonnage 2,026 tons, operated by companies not shown in Exhibit 1.

These vessels, with their registered gross tonnage as of June 30, 1914, and the waters traversed by them, are distributed geographically in the following table:

Waters traversed.	Steam vessels.		Barges.		Total of vessels.	
	No.	Gross tonnage.	No.	Gross tonnage.	No.	Gross tonnage.
Atlantic and Gulf coasts.....	231	406,126	267	190,069	498	596,225
Pacific coast.....	71	224,870	10	9,629	71	234,499
Great lakes.....	67	197,928	2	1,562	69	199,490
Total.....	369	828,924	279	201,290	648	1,030,214

Of the vessels shown in the preceding table, 38 were operated wholly or partly in the foreign trade of the United States. The following statement shows the territorial distribution:

Routes traversed.	Steam vessels.	
	Number.	Gross tonnage.
Atlantic and Gulf coasts:		
To Canadian ports.....	3	10,174
To Cuban ports.....	6	11,349
To European ports.....	2	8,270
Pacific coast:		
To Canadian ports.....	4	11,947
To Mexican ports ¹	9	25,972
To oriental ports.....	8	85,861
Great lakes: To Canadian ports.....	6	19,108
Total.....	38	172,681

¹ Also to Balboa, Panama.

All the vessels engaged in the coastwise and foreign trade of the United States in which railroad companies are interested directly or indirectly are summarized in the following statement:

In community of interest with railroads through—	Steam vessels.		Sailing vessels and barges.		Total of vessels.	
	No.	Gross tonnage.	No.	Gross tonnage.	No.	Gross tonnage.
Intercorporate relationship.....	388	855,530	284	202,445	672	1,057,975
Interlocking stocks, directorates, or officers....	382	1,859,796	44	24,170	426	1,883,966
Total.....	770	2,715,326	328	226,615	1,098	2,941,941

¹ Includes vessels owned but not operated on June 30, 1914.

The foregoing shows in condensed form the more salient facts procured. In the four following exhibits, however, the information called for in the resolution is given in greater detail. Each exhibit is accompanied by an explanatory note. Exhibits 1, 2, and 3 contain particulars as to the relations, corporate or otherwise, between railroads and water lines, as requested in the first paragraph of the resolution. Exhibit 4 is subdivided into sections A and B, and contains particulars as to the prevailing rates between the Atlantic and Pacific ports of the United States and the rates in the coastwise and foreign trade as requested in the second, third, and fourth paragraphs of the resolution.

Exhibit 1 shows the names of carriers by water in which railroad companies are interested through stock ownership or otherwise, the waters traversed by the boat lines, and the terminal ports reached by their vessels. This exhibit also shows the railroad companies which own securities of the water carriers, the details as to the stock owned, and in cases of controlling interest the form and extent of the control, whether the control is direct or indirect and the name of the intermediary through which the control, if indirect, is exercised.

Exhibit 2 shows the names of the individuals, companies, or corporations interested in carriers by water and carriers by rail, the particular companies in which each is interested, and the character of his or its

connection with each company, whether director, officer, or stockholder. The resolution requests the names of all stockholders of steamship lines and railroads engaged in the coastwise and foreign trade of the United States; however, as it seemed that a literal compliance with that part of the resolution was quite impracticable, the carriers were required to show only the names of the largest stockholders. The stockholders shown in this exhibit are therefore the holders of 100 shares or more of the capital stock of railroads who likewise are of the largest holders of voting securities of steamship lines.

Exhibit 3 shows the number of water carriers operated in community of interest with railroads through interlocking stocks, interlocking directorates, or interlocking officers and not through corporate relationship. This exhibit also includes the New York & Cuba Mail Steamship Company, known as the Ward line, and the Southern Steamship Company, because of their intercorporate relationship to the Atlantic, Gulf & West Indies Steamship lines.

From these three exhibits it appears that 121 railroads were interested in 86 carriers by water through intercorporate relationship, interlocking stocks, directorates, or officers. Of the railroads, the interest of 69 was through interlocking stocks, directorates, and officers only, and of 52 railroads through intercorporate relationship. Of the latter, 50 railroads were also among those whose interest in water carriers was through interlocking stocks, directorates, or officers. Of the 86 carriers by water 40 had no corporate relationship with any railroad. Railroads were interested in these water carriers through interlocking stocks, directorates, or officers only. These 40 companies owned and operated 426 vessels, which have a combined gross tonnage of 1,883,966 tons.

Exhibit 4, taking sections A and B together, shows the principal commodities handled, classified as products of agriculture, products of animals, products of mines, products of forests, manufactures, merchandise, and miscellaneous. In this exhibit are shown representative ports between which shipments of each of these commodities have been made; the approximate distance between such ports; and representative rates wholly by water, by water and rail, and wholly by rail. The rates applicable to all water transportation are segregated as between the rates on shipments in the coastwise trade and the rates on shipments in the foreign trade; the rates on shipments in the foreign trade are further subdivided so as to show the rates on shipments carried in vessels under United States registry and the rates on shipments carried in vessels under foreign registry.

EXHIBITS.

EXHIBIT 1.

EXPLANATORY NOTE.

The companies shown in Exhibit 1 are those owning and controlling vessels and steamship lines, through the operation of which freight is transported between Atlantic and Pacific ports partly by water and partly by rail, or in the coastwise and foreign trade of the United States.

The term "coastwise trade" as used in this exhibit embraces all domestic water traffic on ocean, bay, river, and the great lakes, but excludes water transportation on canals, inland lakes (wholly within a state), and ferry, lighterage, or such other terminal services as are necessary adjuncts to rail transportation.

The returns received indicate that on June 30, 1914, there was not any corporate relationship between railroad companies and steamship lines engaged in transporting freight between Atlantic and Pacific ports wholly by water.

In this exhibit the names of the 27 railroad systems shown in table on page 3 appear in alphabetical order, entered flush, while those of their subsidiaries are indented in accordance with the intercorporate relation of such subsidiaries to their parent companies. For purposes of identification the names of the 27 systems are prefixed by letters A to Z, and these as well as their subsidiaries are given reference numbers in the order in which they appear under the caption "name of respondent." By this arrangement details with respect to any one company shown under "voting securities of other companies owned by respondent" or under "voting securities of respondent owned by other companies" can be readily located.

Carriers engaged in water transportation (except ferry, lighterage, or other terminal service) and their corporate relation to railroad companies on June 30, 1914.

INTERSTATE COMMERCE COMMISSION REPORTS.

System designation.	Reference No.	Name of respondent.	Vessels operated.						Waters traversed.	Terminal.	
			Owned.			Chartered.				From—	To—
			Steam vessels.		Barges.	Steam vessels.		Barges.			
			Num-ber.	Gross ton- ton- nage.	Num-ber.	Gross ton- ton- nage.	Num-ber.	Gross ton- ton- nage.			
A	1	Atlantic Coast Line Co.									
	2	Atlantic Coast Line R. Co.									
	3	Louisville & Nash- ville R. R. Co.									
	4	Gulf Transit Co.									
	5	Pensacola Trading Co.	12	8,270					Atlantic Ocean, Gulf of Mexico.	Pensacola, Fla.	European and Gulf ports.
B	6	Peninsular & Oriental S. S. Co.	3	4,303		1	800		{Florida Straits, Gulf of Mexico.	{Port Tampa, Fla. {Key West, Fla.	{Havana, Cuba.
	7	Bessemer & Lake Erie R. R. Co.									
C	8	Buffalo, Rochester & Pitts- burgh Ry. Co.							Lake Ontario.	Coburg, Ont.	Rochester, N. Y.
D	9	Ontario Car Ferry Co., Ltd.	1	4,146							
	10	Chesapeake & Ohio Ry. Co.									
E	11	Delaware, Lackawanna & Western R. R. Co.	2	640	13	14,999			{Long Island Sound, {Atlantic Ocean.	{Jersey City, N. J. {Hoboken, N. J.	{Long Island Sound and New England coast ports.
	12	The Moore Timber Co.				1	1,006		Atlantic Ocean, Gulf of Mexico. Great lakes.	Panama City, Fla.	Jersey City, N. J.
F	13	Erie & Michigan Ry. & Nav. Co.	1	523					" do.....	Various	Various.
G	14	Erie Railroad Co.	18	20,343						Buffalo, N. Y.	{Milwaukee, Wm. {Chicago, Ill.

Carriers engaged in water transportation (except ferry, lighterage, or other terminal service) and their corporate relation to railroad companies on June 30, 1914—Continued.

System designation.	Reference No.	Name of respondent.	Vessels operated.						Waters traversed.	Termini.	
			Owned.			Chartered.				From—	To—
			Steam vessels.		Barges.	Steam vessels.		Barges.			
			Num-ber.	Gross ton-nage.		Num-ber.	Gross ton-nage.				
N	36	New York, New Haven & Hartford R. R. Co. ¹									
	37	Boston Railroad Holding Co. ¹									
	38	Boston & Maine R. R. Co. ¹									
	39	New England Navigation Co. ¹									
	40	Eastern Steamship Corporation.	29	54,826					Atlantic Ocean.....	Boston, Mass.....	St. Johns, N. B.
	41	Hartford & New York Transp. Co.	13	8,805	33	14,470			East River, Long Island Sound.	New York, N. Y.....	Hartford, Conn.
	42	New Bedford, Martha's Vineyard & Nantucket Steamboat Co.	3	2,030			417		Buzzards Bay, Nantucket Sound.	New Bedford, Mass...	Nantucket, Mass.
	43	New England Steamship Co. ²	26	67,876					East River, Long Island Sound.	New York, N. Y.....	Fall River, Mass.
O P	44	New York, Ontario & Western Ry. Co. ¹	2	830	14	12,322			Long Island Sound, Atlantic Ocean.	Weehawken, N. J.....	New England points
	45	Norfolk & Western Ry. Co. ¹									
Q	46	Norfolk Southern R. R. Co. ¹									
	47	John L. Roper Lumber Co.	3	139	6	953			Virginia and North Carolina waters.	No regular runs.	
R	48	Northern Pacific Ry. Co. ¹									
	49	Spokane, Portland & Seattle Ry. Co. ¹									
	50	Dallas, Portland & Astoria Nav. Co.	3	1,640					Willamette and Columbia rivers.	Portland, Oreg.....	The Dalles, Oreg.
	51	Pacific Coast Co. ¹							Pacific Ocean.....	San Francisco, Cal. (Seattle, Wash.....	Eureka, Cal. San Diego, Cal.
	52	Pacific Coast Steamship Co.	2	3,273	3	2,728	14	41,163			

53	Pennsylvania R. R. Co. ¹	19	13, 018				Chesapeake Bay	Baltimore, Md.	Points in Virginia, Maryland, and Delaware.
54	Baltimore, Chesapeake & Atlantic R. Co. ²	11	8, 511				do.	do.	Points in Virginia, Maryland, and District of Columbia.
55	Maryland, Delaware & Va. R. Co. ³	12	41, 983				Great lakes	Buffalo, N. Y.	(Chicago, Ill. Duluth, Minn.
56	Erie & Western Transportation Co.								
57	Connecting Terminal R. R. Co. ¹								
58	Pennsylvania Co m - pany. ¹								
59	Grand Rapids & Indiana R. Co. ¹								
60	Long Island R. R. Co. ¹	4	2, 471	11 3	1, 178		Long Island Sound, Atlantic Ocean.	New York, N. Y.	New London, Conn.
61	Montauk Steamboat Co.	13	5, 881	10	13, 048		Chesapeake Bay	Cape Charles, Va.	Norfolk, Va.
62	New York, Phila. & Norfolk R. R. Co. ⁴	1	38				Sodus Bay, Lake Ontario.	Sodus Point, N. Y.	Various.
63	Northern Central Ry. Co. ⁵					13	Chincooteague Sound.	Franklin City, Va.	Chincooteague, Va.
64	Philadelphia, Balto. & Washington R. R. Co. ⁴								
65	Delaware Railroad Co. ¹								
66	Delaware, Md. & Va. R. R. Co. ¹¹								
67	Susquehanna Coal Co.			20	8, 709		Long Island Sound, Atlantic Ocean.	South Amboy, N. J.	New York, N. Y.
68	West Jersey & Seashore R. R. Co. ⁴	16	144				Maurice River.	Port Norris, N. J.	Boston, Mass.
69	Pera Marquette R. R. Co. ¹								Various.
70	Marquette & Bessemer Dock & Nav. Co.	12	4, 315				Lake Erie.	Conneaut Harbor, Ohio.	Port Stanley, Ontario.

¹ Not directly engaged in water transportation.

² Chartered from New England Steamship Co., owner.

³ Owns but does not operate 1 steam vessel referred to in note 2 above.

⁴ Engaged in water transportation as an auxiliary operation.

⁵ Includes 1 steam tug, gross tonnage 15 tons, not operated on June 30, 1914.

⁶ Includes 2 barges, net tonnage 700 tons, not operated on June 30, 1914.

⁷ Includes 1 steam vessel, gross tonnage 552 tons, not operated on June 30, 1914.

⁸ Owns but does not operate 14 steam vessels referred to in note 9 below.

⁹ Leased from Pacific Coast Co., owner.

¹⁰ Owns but does not operate 3 steam vessels referred to in note 11 below.

¹¹ Leased from Long Island R. R. Co., owner.

¹² Includes 1 steam vessel, gross tonnage 179 tons, owned by respondent but leased to company not included in this table.

¹³ Leased from Delaware, Maryland & Virginia R. R. Co., owner.

¹⁴ Owns but does not operate 3 barges referred to in note 13 above.

¹⁵ Includes 5 steam launches, gross tonnage 115 tons, owned by respondent but leased to company not included in this table.

¹⁶ Includes 1 steam vessel, gross tonnage 1,732 tons, owned by respondent but leased to company not included in this table.

Carriers engaged in water transportation (except ferry, lightering, or other terminal service) and their corporate relation to railroad companies on June 30, 1914—Continued.

System designation.	Reference No.	Name of respondent.	Vessels operated.								Waters traversed.	Terminals.			
			Owned.			Chartered.						From—	To—		
			Steam vessels.		Barges.	Steam vessels.		Barges.							
			Num-ber.	Gross ton- nage.	Num-ber.	Gross ton- nage.	Num-ber.	Gross ton- nage.	Num-ber.	Gross ton- nage.					
U	71	Reading Company ¹ .													
	72	Central Railroad Co. of New Jersey. ¹													
	73	Lehigh & Wilkes-Barre Coal Co.	3	1,154	15	13,210									
	74	Phila. & Reading Ry. Co. ¹ (transp. line).													
V	75	Seaboard Air Line Ry. ¹ .													
	76	Baltimore Steam Packet Co.	5	5,181											
	77	Old Dominion Steamship Co.	14	26,583											
	78	Virginia Navigation Co. ¹ .	1	814											
W	79	Southern Pacific Co. ¹ .													
		Atlantic S. S. line.	28	112,639											
		Portland & Coos Bay line.	1	1,065											
	80	Albion Lumber Co.	1	300											
	81	Asia Steamship Co. ¹ .													
	82	Associated Oil Co. ¹ .	5	21,730	7	6,901									
	83	Central Pacific Ry. Co. ¹ .													
	84	Sacramento Transportation Co.	7	2,312											
	85	Gulf Steamship Co. ¹ .													
	86	Morgan's Louisiana & Texas R. R. & S. S. Co. ¹ .	7	2,480	17	4,329									
	87	Direct Navigation Co.	2	161	10	3,009									

INTERSTATE COMMERCE COMMISSION REPORTS.

Carriers engaged in water transportation (except ferry, lightering, or other terminal service) and their corporate relation to railroad companies on June 30, 1914—Continued.

System designation.	Reference No.	Name of respondent.	Voting securities of other companies owned by respondent.				Voting securities of respondent owned by other companies.			
			Issuing company.		Class of security.	Par value.	Owning company.		Extent of ownership.	Control through ownership. ¹
			Reference No.	Name.			Reference No.	Name.		
A	1	Atlantic Coast Line Co. ¹	2	Atlantic Coast Line R. R. Co.	Stock	\$18,500,000			Per ct.	
			92	Chesapeake Steamship Co.	do.	200,000				
	2	Atlantic Coast Line R. R. Co. ¹	3	Louisville & Nashville R. R. Co.	do.	\$36,720,000	1	Atlantic Coast Line Co.	27.44	
			77	Old Dominion Steamship Co.	do.	120,000				
			6	Peninsular & Occidental Steamship Co.	do.	750,000				
B	3	Louisville & Nashville R. R. Co. ¹	4	Gulf Transit Co.	do.	82,300	2	Atlantic Coast Line R. R. Co.	51.05	Indirect.
	4	Gulf Transit Co. ¹	5	Peninsular Trading Co.	do.	10,000	3	Louisville & Nashville R. R. Co.	100.00	Direct.
				Peninsular Trading Co.			4	Gulf Transit Co.	100.00	do.
	6	Peninsular & Occidental S. S. Co.		Marquette & Bessemer Dock & Nav. Co.	Stock	25,000	17	Atlantic Coast Line R. R. Co.	100.00	Joint.
	7	Bessemer & Lake Erie R. R. Co. ²	70	Ontario Car Ferry Co.	do.	250,000				
C	8	Buffalo, Rochester & Pittsburgh Ry. Co. ²	9	Ontario Car Ferry Co.						
D	9	Ontario Car Ferry Co. (Ltd.)					8	Buffalo, Rochester & Pittsburgh Ry. Co.	100.00	Do.
							101	Grand Trunk Ry. Co. of Canada.		Direct.
E	10	Chesapeake & Ohio Ry. Co. ²	77	Old Dominion Steamship Co.	Stock	120,000				
	11	Delaware, Lackawanna & Western R. R. Co.	31	Mutual Terminal Co. of Buffalo.	do.	15,000				
F	12	The Moore Timber Co.	12	The Moore Timber Co.	do.	1,297,000				
	13	Erie & Michigan Ry. & Nav. Co. ⁴					11	Delaware, Lackawanna & Western R. R. Co.	100.00	Direct.

(liners engaged in water transportation (except ferry, lighters, or other terminal service) and their corporate relation to railroad companies on June 30, 1914 (Continued).

		Voting securities of other companies owned by respondent.			Voting securities of respondent owned by other companies.				
System designation	Reference No.	Name of respondent.	Issuing company.		Par value.	Owning company.			
			Reference No.	Name.		Reference No.	Name.		
M	20	New York Central & Hudson River R. R. Co. - Continued.							
	31	{ Mutual Terminal Co. of Buffalo.	32	Mutual Transit Co.	Stock.	\$39,600	11 Delaware, Lackawanna & Western R. R. Co.	Per ct.	
						14 Erie R. R. Co.	100.00	Direct	
						20 New York Central & Hudson River R. R. Co.	100.00	Joint.	
	32	Mutual Transit Co.				31 Mutual Terminal Co. of Buffalo.	100.00	Sole.	
N	33	Rutland R. R. Co.	34	Rutland Transit Co.	Stock	1,000,000	20 New York Central & Hudson River R. R. Co.	50.82	Joint.
	34	Rutland Transit Co.				36 New York, New Haven & Hartford R. R. Co.	100.00	Sole.	
	35	The Western Transit Co.				33 Rutland R. R. Co.	100.00	Do.	
	36	{ New York, New Haven & Hartford R. R. Co.	37	Boston Railroad Holding Co.	Stock	37,600,400	29 New York Central & Hudson River R. R. Co.	100.00	Do.
			38	New England Navigation Co.	do.	49,405,570	36 New York, New Haven & Hartford R. R. Co.	90.76	Do.
	37	Boston Railroad Holding Co.	44	New York, Ontario & Western Ry. Co.	do.	26,162,200	37 Boston Railroad Holding Co.	52.93	Do.
	38	Boston & Maine R. R. Co.	33	Rutland R. R. Co.	do.	2,352,050			
	39	Boston & Maine R. R. Co.	38	Portland, Mount Desert & Machias Steamboat Co.	do.	15,000			
	40	Boston & Maine R. R. Co.	40	Eastern Steamship Corporation.	do.	2,000,000			
	41	Boston & Maine R. R. Co.	41	Hartford & New York Transportation Co.	do.	2,800,000			
42	New England Navigation Co.	42	New Bedford, Martha's Vineyard & Nantucket Steamboat Co.	do.	141,700				
43	New England Navigation Co.	43	New England S. S. Co.	do.	4,813,400				

RELATIONS BETWEEN CARRIERS BY RAIL AND BY WATER.

No.	Company	Capital Paid	Surplus	Total Assets	Liabilities	Net Worth
40	Eastern Steamship Corporation	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
41	Hartford & New York Transportation Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
42	New Bedford, Martha's Vineyard & Nantucket Steamboat Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
43	New England Steamship Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
44	New York, Ontario & Western Ry. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
45	Norfolk & Western Ry. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
46	Norfolk Southern R. R. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
47	John L. Roper Lumber Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
48	Northern Pacific Ry. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
49	{ Spokane, Portland & Seattle Ry. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
50	{ Dalles, Portland & Astoria Nav. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
51	Pacific Coast Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
52	Pacific Coast Steamship Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
53	Baltimore, Chesapeake & Atlantic Ry. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
54	Erie & Western Transportation Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
55	Long Island R. R. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
56	New York, Philadelphia & Norfolk R. R. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
57	Norfolk & Western Ry. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
58	Norfolk Southern R. R. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
59	Pennsylvania Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
60	Philadelphia, Baltimore & Washington R. R. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
61	Susquehanna Coal Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
62	West Jersey & Seashore R. R. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
63	Maryland, Delaware & Virginia Ry. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
64	Baltimore, Chesapeake & Atlantic Ry. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
65	Maryland, Delaware & Va. Ry. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
66	Erie & Western Transportation Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
67	{ Connecting Terminal R. R. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000
68	{ Connecting Terminal R. R. Co.	\$1,000,000	\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000

Engaged in water transportation as an auxiliary operation.

of more than 50 per cent of the voting securities.

¹ By control is meant the sole or joint ownership as Not directly engaged in water transportation.

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of 9



Carriers engaged in water transportation (except ferry, lightering, or other terminal service) and their corporate relation to railroad companies on June 30, 1914—Continued.

System designation.	Refer-ence No.	Name of respondent.	Voting securities of other companies owned by respondent.				Voting securities of respondent owned by other companies.				
			Issuing company.		Class of security.	Par value.	Owning company.		Extent of ownership. ¹	Control through ownership. ¹	
			Refer-ence No.	Name.			Refer-ence No.	Name.			
S	53	Pennsylvania R. R. Co.—Contd.									
	55	Pennsylvania Company ¹	59	Grand Rapids & Indiana Ry. Co.	Stock	\$2,965,900	53	Pennsylvania R. R. Co.	100.00	Direct	Sole.
	56		100	Pennsylvania-Ontario Transportation Co.	do.	124,800					
	58	Grand Rapids & Indiana Ry. Co.	99	Mackinac Transportation Co.	do.	21,666	58	Pennsylvania Co.	51.21	do.	Do.
	60	Long Island R. R. Co.	61	Montauk Steamboat Co.	do.	150,000	53	Pennsylvania R. R. Co.	57.00	do.	Do.
	61	Montauk Steamboat Co.					60	Long Island R. R. Co.	100.00	do.	Do.
	62	New York, Phila. & Norfolk R. R. Co.	54	Baltimore, Chesapeake & Atlantic Ry. Co.	Stock	\$11,250	53	Pennsylvania R. R. Co.	99.71	do.	Do.
	63	Northern Central Ry. Co. ¹	56	Erie & Western Transportation Co.	do.	500,000		do.	55.00	do.	Do.
			54	Baltimore, Chesapeake & Atlantic Ry. Co.	do.	704,950					
	64	Philadelphia, Baltco. & Washington R. R. Co. ¹	65	Delaware R. R. Co.	do.	2,704,600		do.	99.99	do.	Do.
			66	Delaware, Maryland & Virginia R. R. Co.	do.	326,200					
	65	Delaware Railroad Co. ¹	79	Southern Pacific Co.	do.	1,848,700	64	Philadelphia, Baltimore & Washington R. R. Co.	53.00	do.	Do.
T	66	Delaware, Md. & Va. R. R. Co.	54	Baltimore, Chesapeake & Atlantic Ry. Co.	do.	\$528,200		do.	72.00	do.	Do.
	67	Susquehanna Coal Co.					53	Pennsylvania R. R. Co.	99.00	do.	Do.
	68	West Jersey & Seashore R. R. Co. ¹						do.	51.00	do.	Do.
	69	Pere Marquette R. R. Co. ¹	70	Marquette & Bessemer Dock & Nav. Co.	Stock	\$25,000					
	70	Marquette & Bessemer Dock & Nav. Co.					7	Bessemer & Lake Erie R. R. Co.	100.00	Direct	Joint.
							69	Pere Marquette R. R. Co.			

Carriers engaged in water transportation (except ferry, lightering, or other terminal service) and their corporate relation to railroad companies on June 30, 1914—Continued.

System designation.	Reference No.	Name of respondent.	Voting securities of other companies owned by respondent.			Voting securities of respondent owned by other companies.		
			Refer- ence No.	Issuing company. Name.	Class of se- curity.	Par value.	Refer- ence No.	Own- ing company. Name.
W	79	Southern Pacific Co.—Contd.	87	Direct Navigation Co.	Stock.	\$50,000		Southern Pacific Co.
	86	Morgan's Louisiana & Texas R. R. & N. S. Co.					86	Morgan's Louisiana & Texas R. R. & N. S. Co.
	87	Direct Navigation Co.					79	Southern Pacific Co.
	88	Nile Steamship Co.						do.
	89	Pacific Mail Steamship Co.						do.
X	90	Persia Steamship Co.						do.
	91	Southern Railway Co.	92	Chesapeake S. S. Co. of Bal- timore, Md.	Stock.	\$400,000		
	92	Chesapeake S. S. Co. of Bal- timore, Md.	77	Old Dominion Steamship Co.	do.	210,000		
	93	Union Pacific R. R. Co.	94	Oregon Short Line R. R. Co.	Stock.	99,998,400	91	Southern Ry. Co.
	94	Oregon Short Line R. R. Co.	95	Oregon-Washington R. R. & Nav. Co.	do.	44,999,500	2	Atlantic Coast Line R. R. Co.
Y	95	Oregon-Washington R. & Nav. Co.	96	San Francisco & Portland S. S. Co.	do.	499,500	93	Union Pacific Railroad Co.
	96	Oregon-Washington R. & Nav. Co.					94	Oregon Short Line R. R. Co.
	97	Canadian Pacific Ry. Co.	98	Duluth, So. Shore & At- lantic Ry. Co.	do.	\$11,200,000	95	Oregon-Washington R. R. & Nav. Co.
	98	Duluth, So. Shore & At- lantic Ry. Co.	100	Pennsylvania-Ontario Transportation Co.	do.	124,500		
	99	Mackinac Transportation Co.	99	Mackinac Transportation Co.	do.	31,997		
Z	100	Mackinac Transportation Co.					97	Canadian Pacific Ry. Co.
	101	Duluth, So. Shore & At- lantic Ry. Co.					98	Duluth, South Shore & At- lantic Ry. Co.
	102	Grand Rapids & Indiana Ry. Co.					99	Grand Rapids & Indiana Ry. Co.
	103	Michigan Central R. R. Co.					100	Michigan Central R. R. Co.
	104	Michigan Central R. R. Co.						

100	Pennsylvania - Ontario Transportation Co.	103	Canada-Atlantic Transit Co.	Stock.	240,000	97	Canadian Pacific Ry. Co.	Do.
101	Grand Trunk Ry. Co. of Canada ¹	103	Central Vermont Ry. Co.	do.	\$2,184,000	98	Pennsylvania Company	do.
102	Canada-Atlantic Transit Co.	106	Detroit, Grand Haven & Milwaukee Ry. Co.	do.	1,500,000		James W. Ellsworth	
103	Central Vermont Railway Co. ²	9	Ontario Car Ferry Co.	do.	1,260,000			
104	Central Vermont Transportation Co.	104	Central Vermont Transportation Co.	Stock.	1,000,000	101	Grand Trunk Ry. Co. of Canada.	Sole.
105	Detroit, Grand Haven & Milwaukee Ry. Co. ³	106	Grand Trunk Milwaukee Car Ferry Co.	Stock.	200,000	101	Central Vermont Ry. Co.	Do.
106	Grand Trunk Milwaukee Car Ferry Co.					103	Grand Trunk Ry. Co. of Canada.	Do.
						101	Detroit, Grand Haven & Milwaukee Ry. Co.	Do.
						105		Do.

¹ By control is meant the sole or joint ownership of more than 50 per cent of the voting securities.

² Engaged in water transportation as an auxiliary operation.

³ Not directly engaged in water transportation.

⁴ Includes \$36,500, or 66.58 per cent of total, held by Central Trust Co. of New York, trustee, under Southern Ry. first consolidated mortgage bonds.

⁵ Includes \$11,172,000, or 80.78 per cent of total, held in trust for Canadian Pacific Ry. Co. by Sir Thomas G. Shaughnessy, Sir Wm. Van Horne, K. C. M. G., and Richard B. Angus.

⁶ Includes \$2,164,500, or 72.15 per cent of total, held in trust for Grand Trunk Ry. Co. of Canada by A. W. Smithers, Sir Henry M. Jackson, and Bart E. J. Chamberlin, trustees.

⁷ Includes \$949,700 held in trust for Grand Trunk Ry. Co. of Canada by A. W. Smithers, Sir Henry M. Jackson, and Bart E. J. Chamberlin, trustees.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—					
		Carriers by water.			Carriers by rail.		
		Director, officer, or stockholder.	Reference No.	Name.	Director, officer, or stockholder.	Reference No.	Name.
Brown, Bros. & Co.....	United States.	Stockholder .....	.....	American-Asiatic S. S. Co...	Stockholder .....	.....	Chl., Burlington & Quincy R. R. Co.
					.....do.....	.....	Delaware & Hudson Co.
					.....do.....	11	Del., Lackawanna & Western R. R. Co.
					.....do.....	14	Erie R. R. Co.
					.....do.....	18	Great Northern Ry. Co.
					.....do.....	21	Illinois Central R. R. Co.
					.....do.....	.....	Kansas City Southern Ry. Co.
					.....do.....	3	Louisville & Nashville R. R. Co.
					.....do.....	.....	Minn. St. Paul & S. M. R. Co.
					.....do.....	29	New York Cent. & Hud. Riv. R. R. Co.
					.....do.....	36	New York, New Hav. & Hart. R. R. Co.
					.....do.....	45	Norfolk & Western Ry. Co.
					.....do.....	46	Norfolk Southern R. R. Co.
					.....do.....	48	Norfolk Pacific Ry. Co.
					.....do.....	53	Pennsylvania R. R. Co.
					.....do.....	53	Rutland R. R. Co.
					.....do.....	79	Southern Pacific Co.
					.....do.....	91	Southern Ry. Co.
					.....do.....	.....	Texas & Pacific Ry. Co.
					.....do.....	63	Union Pacific R. R. Co.
					.....do.....	.....	Wisconsin Central Ry. Co.
Parsons, Wm. Barclay.....	do.....	do.....	.....	do.....	do.....	2	Atlantic Coast Line R. R. Co.
					do.....	.....	Delaware & Hudson Co.
Vanderbilt, Cornelius.....	do.....	do.....	.....	do.....	Director	3	Louisville & Nashville R. R. Co.
					do.....	.....	Delaware & Hudson Co.
					Stockholder	21	Illinois Central R. R. Co.
					.....do.....	29	New York Cent. & Hud. Riv. R. R. Co.
					Director .....	.....	Union Pacific R. R. Co.
					.....do.....	93	Yazoo & Miss. Valley R. R. Co.

Quay, Jerry	do	do	do	American-Hawaiian S. S. Co.	Stockholder	14	Erie R. R. Co.
1. Southern Pacific Co. 1	do	do	do	do	do	45	Norfolk & Western Ry. Co.
2. Abrahamson, Bartram E.	do	do	do	do	do	48	Northern Pacific Ry. Co.
3. Dillman, Chas. F.	do	do	do	do	do	53	Pennsylvania R. R. Co.
	do	do	do	do	do	70	Southern Pacific Co.
	do	do	do	do	do	20	Western Pacific Ry. Co.
	do	do	do	do	do	53	New York Cent. & Hud. Riv. R. Co.
Edwards, T. O.	do	do	do	do	do	70	Pennsylvania R. R. Co.
	do	do	do	do	do	93	Southern Pacific Co.
Hartman, Mary W.	do	do	do	do	do	93	Union Pacific R. R. Co.
	do	do	do	do	do	83	Central Pacific Ry. Co.
	do	do	do	do	do	65	South Pacific Coast Ry. Co.
Harold, Rudolph, Jr.	do	do	do	do	do	70	Delaware & Hudson Co.
Herrin, Wm. F.	do	do	do	do	do	93	Southern Pacific Co.
Pollitz & Co., Edw.	do	do	do	do	do	70	Union Pacific R. R. Co.
Schwerin, R. P.	do	do	do	do	do	93	Southern Pacific Co.
Southern Pacific Co. 1	do	do	do	do	do	70	Southern Pacific Co.
Sprinkle, William	do	do	do	do	do	93	Western Pacific Ry. Co.
	do	do	do	do	do	83	Central Pacific Ry. Co.
Sutro & Co.	do	do	do	do	do	70	Southern Pacific Co.
Bessemer Investment Co.	do	do	do	do	do	21	South Pacific Coast Ry. Co.
	do	do	do	do	do	20	Western Pacific Ry. Co.
	do	do	do	do	do	46	Delaware & Hudson Co.
	do	do	do	do	do	48	Illinois Central R. R. Co.
	do	do	do	do	do	53	New York Cent. & Hud. Riv. R. Co.
	do	do	do	do	do	46	R. Co.
	do	do	do	do	do	48	Norfolk & Western Ry. Co.
	do	do	do	do	do	53	Northern Pacific Ry. Co.
	do	do	do	do	do	93	Pennsylvania R. R. Co.
	do	do	do	do	do	53	Union Pacific R. R. Co.
	do	do	do	do	do	14	Pennsylvania R. R. Co.
	do	do	do	do	do	14	Lake Erie & Western R. R. Co.
	do	do	do	do	do	14	Erie R. R. Co.
	do	do	do	do	do	14	New York, Susq. & Western R. Co.
	do	do	do	do	do	2	Atlantic Coast Line R. R. Co.
	do	do	do	do	do	18	Delaware & Hudson Co.
	do	do	do	do	do	18	Great Northern Ry. Co.
	do	do	do	do	do	18	Kansas City Southern Ry. Co.

See note 6, page 23.

See note 4, page 23.

* Interested in or connected with Associated Oil Co., Pacific Mail S. S. Co., Tyee Co., and rail carrier shown in last column opposite company first mentioned.

* Interested in or connected with Atlantic & Pacific S. S. Co., New York & Pacific S. S. Co., Ltd., and rail carrier shown in last column opposite company first mentioned.

* Interested in or connected with Atlantic, Gulf & West Indies S. S. line, Clyde S. S. Co., International Mercantile Marine Co., and rail carriers shown in last column opposite company first mentioned.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—			
		Carriers by water.		Carriers by rail.	
		Director, officer, or stockholder.	Reference No.	Director, officer, or stockholder.	Reference No.
Booth, Angie M.....	United States.	Stockholder .....	.....	Stockholder	60
Boven & Co., J. W.....	do.....	do.....	do.....	do.....	3
				do.....	79
				do.....	93
				do.....	38
				do.....	10
				do.....	98
Brater, Kathrine G.....	do.....	do.....	do.....	do.....	26
				do.....	48
				do.....	69
				do.....	33
				do.....	79
				do.....	10
				do.....	48
				do.....	46
				do.....	2
				do.....	38
				do.....	10
				do.....	.....
				do.....	.....
				do.....	.....
Fletcher, Austin B.....	do.....	do.....	do.....	do.....	.....
				do.....	.....
				do.....	.....
				do.....	.....
				do.....	.....
				do.....	.....
Hayden, Stone & Co.,.....	do.....	do.....	do.....	do.....	.....
				do.....	.....
				do.....	.....
				do.....	.....
				do.....	.....
				do.....	.....

Heller, Charles.....	do.....	Stockholder.....	do.....	29	do.....	Minn. St. Paul & S. S. M. Ry. Co. New York Cent. & Hud. Riv. R. R. Co. New York, New Hav. & Hart. R. R. Co. Norfolk Southern R. R. Co. Northern Pacific Ry. Co. Pennsylvania R. R. Co. Rutland R. R. Co. Southern Pacific Co. Southern Ry. Co. Texas & Pacific Ry. Co. Erie R. R. Co. Kansas City Southern Ry. Co. Lehigh Valley R. R. Co. New York Cent. & Hud. River R. R. Co. Boston & Maine R. R. Co. Maine Central R. R. Co. Pere Marquette R. R. Co. Atlantic Coast Line R. R. Co. Boston & Maine R. R. Co. Chesapeake & Ohio Ry. Co. Cleve., Cin., C. & St. Louis Ry. Co. Colorado & Southern Ry. Co. Delaware & Hudson Co. Duluth, So. Shore & Atlantic Ry. Co. Erie R. R. Co. Great Northern Ry. Co. Illinois Central R. R. Co. Kansas City Southern Ry. Co. Lake Erie & Western R. R. Co. Lehigh Valley R. R. Co. Minn. St. Paul & S. S. M. Ry. Co. New York, New Hav. & Hart. R. R. Co. Norfolk & Western Ry. Co. Norfolk Southern R. R. Co. Northern Pacific Ry. Co. Pennsylvania R. R. Co. Rutland R. R. Co. Seaboard Air Line Ry. Southern Pacific Co. Southern Ry. Co. Texas & Pacific Ry. Co.
Hill, John F., Inc.¹.....	do.....	do.....	do.....	30	do.....	
Hambler & Weeks.....	do.....	do.....	do.....	31	do.....	

Interested in or connected with Atlantic, Gulf & West Indies S. S. line, Eastern S. S. Corporation, and rail carriers shown in last column opposite company first mentioned.

[illegible]

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Carriers by water.			Carriers by rail.		
		Director, officer, or stockholder.	Refer- ence No.	Name.	Director, officer, or stockholder.	Refer- ence No.	Name.
Eaton, George F.	United States.	Director.	.....	Benedict-Manson Marine Co.	Stockholder	.....	New York, New Hav. & Hart R. R. Co.
Gresley, Edwin S.	do.	Stockholder	.....	do.	do.	.....	do.
Manson, Helen H. P.	do.	do.	.....	do.	do.	.....	Lelich Valley R. R. Co.
Bennett, H. W.	do.	Director and officer	.....	Bennett's North Carolina line	do.	.....	Pennsylvania R. R. Co.
Liggett, John E. J.	do.	Director.	.....	Boston & Yarmouth S. S. Co. Ltd.	Director	.....	Texas & Pacific Ry. Co.
Brown, John W.	do.	Director and officer	.....	Bridgeport & Port Jefferson S. S. Co.	Stockholder	.....	Northern Central Ry. Co.
McCutchen, Chas. W.	do.	Stockholder	.....	Hull Steamship Co.	do.	.....	Erie R. R. Co.
Chamberlain, E. J. A.	Canada.	Director and officer	102	Canada-Atlantic Transit Co.	Director	.....	Det. Grand Haven & Milwaukee Ry. Co.
Dakynpse, J. E. A.	do.	do.	.....	do.	do.	.....	Grand Trunk Ry. Co. of Canada.
Grand Trunk Ry. Co. of Canada.	do.	Stockholder	.....	do.	Stockholder	.....	do.
Kelly, Howard G. J.	do.	Director and officer	.....	do.	do.	.....	Central Vermont Ry. Co.
Scott, Frank.	do.	do.	.....	do.	Director and officer	.....	Det. Grand Haven & Milwaukee Ry. Co.
Smith, W. H. A.	do.	do.	.....	do.	do.	.....	do.
Winslow, E. B. J.	United States.	do.	.....	Casco Bay & Harpawell lines.	Stockholder	.....	Duluth, So. Shore & Atlantic Ry. Co.
Chamberlain, E. J. A.	Canada.	Director and stockholder.	104	Central Vermont Transportation Co.	Director	.....	Norfolk & Western Ry. Co.
					do.	.....	Boston & Maine R. R. Co.
					do.	.....	Bridgton & Saco River R. R. Co.
					do.	.....	Maine Central R. R. Co.
					do.	.....	Sandy Riv. & Rangeley Lakes R. R. Co.

Pearson, E. J.	United States.	Officer.	do.	do.	Director	Central Vermont Ry. Co.
Jones, G. C.	do.	Director and officer.	do.	do.	Director	do.
Smith, E. C.	do.	do.	do.	do.	Director	do.
Swisher, H. P.	do.	do.	do.	do.	do.	do.
Waters, C. W.	do.	Director and stockholder.	do.	do.	do.	do.
Atlantic Coast Line R. R. Co. ¹	do.	Stockholder.	92	Chesapeake S. S. Co.	Stockholder.	3
Central Trust Co. of New York (trustees).	do.	Stockholder (as trustee for Southern Ry. Co.).		do.	do.	Louisville & Nashville R. R. Co. (stock held by New York Trust Company, trustee). Chicago, Rock Island & Pac. Ry. Co.
					do.	Colorado & Southern Ry. Co. Del., Lackawanna & Western R. R. Co.
					do.	Duluth, So. Shore & Atlantic Ry. Co.
					do.	Erle R. R. Co.
					do.	Ft. Worth & Denver City Ry. Co.
					do.	Galveston, Houston & Henderson R. R. Co.
					do.	New York Cent. & Hud. Riv. R. R. Co.
					do.	Northern Pacific Ry. Co.
					do.	Union Pacific R. R. Co.
					do.	Wichita Valley Ry. Co.
Compton, Key ¹	do.	Director and officer.	do.	do.	Director	Chesapeake & Ohio Ry. Co.
Culb, J. M.	do.	Director.	do.	do.	Stockholder	Southern Ry. Co.
Gibbs, John S.	do.	do.	do.	do.	do.	Md., Del. & Va. Ry. Co.
					do.	Northern Central Ry. Co.
					do.	Southern Pacific Co.
					do.	Atlantic Coast Line R. R. Co.
					do.	Md., Del. & Va. Ry. Co.
					do.	Northern Central Ry. Co.
					do.	Atlantic Coast Line R. R. Co.
					do.	Charleston & West. Carolina Ry. Co.
James, Norman ¹	do.	Director and officer.	do.	do.	do.	Louisville & Nashville R. R. Co.
Jeakins, Michael ¹	do.	Director.	do.	do.	do.	

¹ See note 2, page 29.² Interested in or connected with Canada-Atlantic Transit Co., Central Vermont Transportation Co., Grand Trunk Milwaukee Car Ferry Co., Ontario Car Ferry Co., and rail carriers shown in last column opposite company first mentioned.³ Interested in or connected with Canada-Atlantic Transit Co., Ontario Car Ferry Co., and rail carrier (or carriers) shown in last column opposite company first mentioned.⁴ Interested in or connected with Canada-Atlantic Transit Co., Grand Trunk Milwaukee Car Ferry Co., and rail carrier shown in last column opposite company first mentioned.⁵ Interested in or connected with Chesapeake S. S. Co., Old Dominion S. S. Co., Portsmouth & Occidental S. S. Co., and rail carriers shown in last column opposite company first mentioned.⁶ Interested in or connected with Chesapeake S. S. Co., Old Dominion S. S. Co., and rail carrier shown in last column opposite company first mentioned.⁷ Interested in or connected with Chesapeake S. S. Co., Merchants & Miners' Transportation Co., and rail carriers shown in last column opposite company first mentioned.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—			Carriers by rail.		
		Carriers by water.		Director, officer, or stockholder.	Refer- ence No.	Name.	Name.
		Director, officer, or stockholder.	Refer- ence No.				
Jenkins, Michael I.	United States.	Director		Stockholder			Maryland & Pennsylvania R. R. Co. York, New Hav. & Hart. R. R. Co.
Kemly, J. R.	do.	do.		Director, officer, and stockholder			Norfolk Central Ry. Co. Pennsylvania R. R. Co. Atlantic Coast Line R. R. Co.
Wilson, Wm F.	do.	Officer		Stockholder			Charleston & West. Carolina Ry. Co.
Citizens Savings & Trust Co.	do.	Stockholder		do.			Norfolk & Western Ry. Co. Southern Ry. Co. Lehigh Valley R. R. Co.
Halle, Manned	do.	do.		do.			Northern Pacific Ry. Co. Ousachita & Northwestern R. R. Co.
Barwind, E. J.	do.	do.		do.			Pennsylvania R. R. Co. Southern Pacific Co.
Case, Mrs. Laura L.	do.	Director		do.			Union Pacific R. R. Co. Lehigh Valley R. R. Co. Union Pacific R. R. Co.
Jones, E. Clarence	do.	Stockholder		do.			Boston & Maine R. R. Co. Great Northern Ry. Co.
Mallory, Henry R.	do.	Director and officer		do.			New York, New Hav. & Hart. R. R. Co.
Mallory, Robert	do.	Director		do.			Pennsylvania R. R. Co.
				Stockholder			Great Northern Ry. Co. Long Island R. R. Co. Northern Pacific Ry. Co. Southern Pacific Co. Union Pacific R. R. Co.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Carriers by water.			Interested in or connected with—			Carriers by rail.	
		Director, officer, or stockholder.	Refer- ence No.	Name.	Director, officer, or stockholder.	Refer- ence No.	Name.		
Cobb, Melville L.	United States.	Stockholder.	40	Eastern Steamship Corporation.	Stockholder	26	Maine Central R. R. Co.		
Hayden, Stone & Co. ¹	do.	do.		do.	do.	53	Pennsylvania R. R. Co.		
Hill, John F., Inc. ¹	do.	do.		do.	do.	93	Union Pacific R. R. Co.		
Liggett, John E. ¹	do.	Director.		do.	do.				
Mallory, Henry R. ¹	do.	do.		do.	do.				
Palme, Webber & Co.	do.	Stockholder.		do.	do.	38	Boston & Maine R. R. Co.		
					do.	10	Chesapeake & Ohio Ry. Co.		
					do.		Cleve., Cinn., Chi. & St. Louis Ry. Co.		
					do.	18	Great Northern Ry. Co.		
					do.		Minn., St. Paul & S. M. Ry. Co.		
					do.	36	New York, New Hav. & Hart. R. R. Co.		
					do.		Norfolk Pacific Ry. Co.		
					do.	48	Seaboard Air Line Ry.		
					do.	75	Southern Pacific Co.		
					do.	79	Boston & Maine R. R. Co.		
					do.	33	Erle R. R. Co.		
					do.	14	Great Northern Ry. Co.		
					do.	18	Illinois Central R. R. Co.		
					do.	21	Louisville & Nashville R. R. Co.		
					do.	3	New York Cent. & Hud. Riv. R. R. Co.		
					do.	29	New York, New Hav. & Hart. R. R. Co.		
					do.	36	Northern Pacific Ry. Co.		
					do.	48	Pennsylvania R. R. Co.		
					do.	53	Pere Marquette R. R. Co.		
					do.	69	Southern Pacific Co.		
					do.	79	Southern Ry. Co.		
					do.	91	Union Pacific R. R. Co.		
					do.	93	Union Pacific R. R. Co.		
Richardson, Hill & Co.	do.	do.	40	do.	do.				

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—			Carriers by rail.		
		Carriers by water.		Director, officer, or stockholder.	Reference No.	Name.	Reference No.
		Director, officer, or stockholder.	Name.				
Giesen, John P.,	United States.	Director.	Erie & Western Transportation Co.	Director and officer.	60	Del., Md. & Va. R. R. Co.	
				do.	61	Delaware R. R. Co.	
				Director and stockholder.	62	Grand Rapids & Indiana Ry. Co.	
				do.	63	Long Island R. R. Co.	
				do.	64	New York, Phila. & Norfolk R. R. Co.	
				do.	65	Norfolk & Western Ry. Co.	
				do.	66	Norfolk Central Ry. Co.	
				do.	67	Pennsylvania R. R. Co.	
				do.	68	Phila., Balto. & Wash. R. R. Co.	
				do.	69	West Jersey & Seashore R. R. Co.	
				do.	70	Balto., Ches. & Atlantic Ry. Co.	
				do.	71	Md., Del. & Va. Ry. Co.	
				do.	72	Norfolk & Western Ry. Co.	
				do.	73	Pennsylvania R. R. Co.	
				do.	74	Balto., Ches. & Atlantic Ry. Co.	
				do.	75	Delaware R. R. Co.	
				do.	76	Md., Del. & Va. Ry. Co.	
				do.	77	New York, Phila. & Norfolk R. R. Co.	
				do.	78	Norfolk Central Ry. Co.	
				do.	79	Pennsylvania R. R. Co.	
				do.	80	Phila., Balto. & Wash. R. R. Co.	
				do.	81	West Jersey & Seashore R. R. Co.	
				do.	82	New York, Phila. & Norfolk R. R. Co.	
				do.	83	Balto., Ches. & Atlantic Ry. Co.	
				do.	84	Long Island R. R. Co.	
				do.	85	New York, New Hav. & Hart. R. R. Co.	
				do.	86	New York, Phila. & Norfolk R. R. Co.	
				do.	87	Norfolk & Western Ry. Co.	
				do.	88	Norfolk & Western Ry. Co.	
				do.	89	Norfolk & Western Ry. Co.	
				do.	90	Norfolk & Western Ry. Co.	
				do.	91	Norfolk & Western Ry. Co.	
				do.	92	Norfolk & Western Ry. Co.	
				do.	93	Norfolk & Western Ry. Co.	
				do.	94	Norfolk & Western Ry. Co.	
				do.	95	Norfolk & Western Ry. Co.	
				do.	96	Norfolk & Western Ry. Co.	
				do.	97	Norfolk & Western Ry. Co.	
				do.	98	Norfolk & Western Ry. Co.	
				do.	99	Norfolk & Western Ry. Co.	
				do.	100	Norfolk & Western Ry. Co.	

[illegible]

1 Interested in or connected with Erie & Western Transportation Co., Susquehanna Coal Co., and rail carriers shown in last column opposite company first mentioned.
 2 Interested in or connected with Erie & Western Transportation Co., Montauk Steamboat Co., and rail carriers shown in last column opposite company first mentioned.
 3 Interested in or connected with Evansville & Bowling Green Packet Co., Louisville & Evansville Transportation Co., St. Louis & Tennessee River Packet Co., and rail carriers shown in last column opposite company first mentioned.
 4 Interested in or connected with Girard Trust Co., Philadelphia-New Orleans Transportation Co., and rail carrier shown in last column opposite company first mentioned.
 5 See note 2, page 31.
 6 See note 3, page 31.
 7 Interested in or connected with Great Lakes & St. Lawrence Transportation Co., Marquette & Bessemer Dock & Navigation Co., and rail carriers shown in last column opposite company first mentioned.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—			Carriers by water.			Carriers by rail.		
		Director, officer, or stockholder.	Refer-ence No.	Name.	Director, officer, or stockholder.	Refer-ence No.	Name.	Director, officer, or stockholder.	Refer-ence No.	Name.
Mitchell, John J.....	United States.	Director and stockholder.		Great Lakes & St. Lawrence Transp. Co.	Director		Colorado & Southern Ry. Co.			
Wade, J. H.....	do.	Stockholder.	19	do.	Stockholder.	21	Illinois Central R. R. Co.			
Great Northern Ry. Co. ¹	do.	do.		Great Northern S. S. Co.	Director		Kansas City Southern R. Co.			
Hill, Louis W. ¹	do.	Director		do.	Director and officer	49	Lake Superior & Ishpeming Ry. Co.			
Jackson, R. A. ¹	do.	do.		do.	Stockholder		Spokane, Portland & Seattle Ry. Co.			
Katzbach L. E. ¹	do.	Director and officer		do.	Director and officer	18	Great Northern Ry. Co.			
Kenney, W. P. ¹	do.	do.		do.	Stockholder	48	Northern Pacific Ry. Co.			
Libbey, E. C. ¹	do.	Director		do.	do.	18	Great Northern Ry. Co.			
Martin, G. R. ¹	do.	Director and officer		do.	Officer	18	do.			
Nichols, E. T. ¹	do.	Officer		do.	do.	18	do.			
					Director and stockholder.	18	Chicago, Burlington & Quincy R. R. Co.			
Thomas, A. M. ¹	do.	do.		do.	Director		Colorado & Southern Ry. Co.			
Bartholomew, B. G. ¹	do.	do.	85	Gulf Steamship Co.	Director and officer	18	Great Northern Ry. Co.			
Bull, W. F. ¹	do.	do.		do.	Officer	79	do.			
					do.		Southern Pacific Co.			
					do.		Arizona Eastern R. R. Co.			
					Stockholder	83	Central Pacific Ry. Co.			
					Officer	14	Chesapeake & Ohio Ry. Co.			
					do.		Erie R. R. Co.			
					do.		Louisiana Western R. R. Co.			
					Stockholder	79	Southern Pacific Co.			
Junges, C. W. ¹	do.	do.		do.	Officer	93	Union Pacific R. R. Co.			
Kruehn, J. J. ¹	do.	Director		do.	Officer	79	Southern Pacific Co.			
					do.		Arizona Eastern R. R. Co.			
					Director		Iberia & Vermilion R. R. Co.			
					do.		Louisiana Western R. R. Co.			
					do.		Morgan's L. & Tex. R. R. & S. Co.			
					do.	86	do.			
					do.	79	Southern Pacific Co.			

McDonald, A. D. ¹	do	Director and officer	do	Officer	83	Arizona Eastern R. R. Co. Central Pacific Ry. Co. Louisiana Western R. R. Co. Morgan's L. & Tex. R. R. & S. S. Co. Southern Pacific Co. South Pacific Coast Ry. Co.
Naff, Hugh ²	do	do	do	do	79	do
Southern Pacific Co. ³	do	Stockholder	do	Director and officer	86	Arizona Eastern R. R. Co. Louisiana Western R. R. Co. Morgan's L. & Tex. R. R. & S. S. Co. Southern Pacific Co.
Spence, L. J. ⁴	do	Director and officer	do	do	79	do
Van Deventer, A. K. ⁵	do	Officer	do	Officer	79	do
Stubbs, R. S.	do	do	85	Director and officer	79	Louisiana Western R. R. Co. Southern Pacific Co.
Worthington, W. A. ⁶	do	Director	do	Officer	79	Louisville & Nashville R. R. Co.
Ellis, J. H.	do	Director and officer	4	Stockholder	3	do
Hayden, Charles	do	Officer	do	Officer	3	do
Huston, P. P.	do	do	do	Stockholder	3	do
Maspothen, W. L.	do	Director and officer	do	Officer	3	do
Roberts, J. M.	do	Officer	do	Director and officer	3	do
Smith, Milton H.	do	Director and officer	do	Officer	3	do
Sullivan, E. O.	do	Officer	do	Director and stockholder	3	do
Barney, D. Newton	do	Director	41	holder	21	Central New England Ry. Co.
				Stockholder	36	Illinois Central R. R. Co.
				Director and stockholder	36	New York, New Hav. & Hart. R. R. Co.
				Director	44	New York, Ontario & West. Ry. Co.
				Stockholder	45	Norfolk & Western Ry. Co.
				do	48	Northern Pacific Ry. Co.
				Director	29	Central New England Ry. Co.
				do	36	Maine Central R. R. Co.
				do	36	New York, New Hav. & Hart. R. R. Co.
				do	36	Central New England Ry. Co.
				do	36	New York, New Hav. & Hart. R. R. Co.
Brewster, Frederick F. ¹	do	Director and officer	do	do	36	do
Buckland, E. G. ²	do	Director and officer	do	do	36	do

¹ Interested in or connected with Great Northern S. S. Co., Northern S. S. Co., and rail carrier (or carriers) shown in last column opposite company first mentioned.

² Interested in or connected with Gulf S. S. Co., Pacific Mail S. S. Co., and rail carriers shown in last column opposite company first mentioned.

³ See note 6, page 22.

⁴ See note 5, page 22.

⁵ Interested in or connected with Hartford & New York Transportation Co., New England S. S. Co., and rail carriers shown in last column opposite company first mentioned.

⁶ Interested in or connected with Hartford & New York Transportation Co., New England S. S. Co., and rail carriers shown in last column opposite company first mentioned.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—			Carriers by rail.		
		Carriers by water.		Director, officer, or stockholder.	Reference No.	Name.	Reference No.
Clark, A. E. 1	United States.	Officer.	Hartford & New York Transportation Co.	Officer.		Central New England Ry. Co.	
Elliott, Howard 1	do.	Director and officer.	do.	do.		New York, New Hav. & Hart. R. Co.	36
				Director and officer.		Central New England Ry. Co.	
				do.		New York, New Hav. & Hart. R. Co.	36
				do.		New York, Ontario & Western Ry. Co.	44
				Stockholder.		Northern Pacific Ry. Co.	48
				Director.		Rangleley Lakes & Megantic R. R. Co.	
Goodrich, C. C.	do.	Director.	do.	Director and officer.		Rutland R. R. Co.	33
Goodrich, E. S.	do.	do.	do.	do.		New York, New Hav. & Hart. R. R. Co.	36
Hemingway, Jas. S. 1	do.	do.	do.	Director.		do.	36
				Director and stockholder.		Central New England Ry. Co.	
Howe, D. R.	do.	do.	do.	Stockholder.		New York, New Hav. & Hart. R. R. Co.	36
Hustis, Jas. S. 1	do.	Officer.	do.	Director and officer.		do.	36
May, A. S. 1	do.	do.	do.	Officer.		Central New England Ry. Co.	
				do.		New Jersey & New York R. R. Co.	
				do.		New York, New Hav. & Hart. R. R. Co.	36
Robertson, A. Heaton 1	do.	Director.	do.	Director.		Central New England Ry. Co.	
				Director and stockholder.		New York, New Hav. & Hart. R. R. Co.	36
				Director.		New York, Ontario & Western Ry. Co.	44
Skinner, William 1	do.	do.	do.	do.		Central New England Ry. Co.	
				Stockholder.		Lehigh Valley R. R. Co.	24
				Director and stockholder.		New York, New Hav. & Hart. R. R. Co.	36
				Director.		Rangleley Lakes & Megantic R. R. Co.	

Underwood, T. D.	do.	do.	15	Hillside Coal & Iron Co.	do.	Director and officer.	13	Rutland R. R. Co. Bath & Hammondsport R. R. Co. Chicago & Erie R. R. Co. Erie R. R. Co. New Jersey & New York R. R. Co. New York, Susq. & Western R. Co. Wilkes-Barre & Eastern R. R. Co.
Geipel, Frank	do.	Stockholder.		Humboldt Steamship Co.		Director, officer, and stockholder.		Gulf & Sabine River R. R. Co. Warren, Johnsville & Saline River R. R. Co.
Berwind, E. J.	do.	Director.		International Marine Co.		Director and officer.		
Morgan, J. P.	do.	do.		do.		Officer.		
Pertina, George W.	do.	do.		do.		Stockholder.	14	Frie R. R. Co.
Steele, Charles	do.	do.		do.		Director and stockholder.	20	New York Cent. & Hud. Riv. R. R. Co.
				do.		Director.	48	Northern Pacific Ry. Co.
				do.		do.	91	Southern Ry. Co.
				do.		do.	14	Erie R. R. Co.
				do.		do.	17	Florida East Coast Ry. Co.
				do.		do.	24	Chicago & Erie R. R. Co.
				do.		do.	48	Lehigh Valley R. R. Co.
				do.		do.	68	New Jersey & New York R. R. Co.
				do.		do.	91	Northern Pacific Ry. Co.
Waterbury, John I.	do.	do.		do.		Stockholder.	18	Southern Ry. Co.
				do.		Director.	48	Great Northern Ry. Co.
Widener, P. A. B.	do.	do.		do.		Stockholder.	48	Johnsville & Nashville R. R. Co.
				do.		do.	72	Northern Pacific Ry. Co.
				do.		do.	52	Central Railroad Co. of New Jersey.
				do.		do.	54	Pennsylvania R. R. Co.
Baker, George F.	do.	do.	73	Lehigh & Wilkes-Barre Coal Co.	do.	Director and stockholder.	72	Philadelphia & Reading Ry. Co.
				do.		Director.	72	Central Railroad Co. of New Jersey.
				do.		do.		Chicago, Burlington & Quincy R. R. Co.
				do.		do.		Cleve., Cinn., Chi. & St. Louis Ry. Co.

¹ Interested in or connected with Hartford & New York Transportation Co., New England Navigation Co., New England S. S. Co., and rail carriers shown in last column opposite company first mentioned.

² Interested in or connected with Hartford & New York Transportation Co., New Bedford, Martha's Vineyard & Nantucket Steamboat Co., New England Navigation Co., New England S. S. Co., and rail carriers shown in last column opposite company first mentioned.

³ Interested in or connected with Hartford & New York Transportation Co., New Bedford, Martha's Vineyard & Nantucket Steamboat Co., New England Steamship Co., and rail carriers shown in last column opposite company first mentioned.

⁴ Interested in or connected with Hartford & New York Transportation Co., New England S. S. Co., and rail carriers shown in last column opposite company first mentioned.

⁵ Interested in or connected with Hartford & New York Transportation Co., New England Navigation Co., and rail carriers shown in last column opposite company first mentioned.

⁶ Interested in or connected with International Mercantile Marine Co., Pennsylvania Coal Co., and rail carriers shown in last column opposite company first mentioned.

⁷ See note 6, page 20.

⁸ Interested in or connected with International Mercantile Marine Co., and rail carriers shown in last column opposite company first mentioned.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—			Carriers by rail.		
		Carriers by water.		Director, officer, or stockholder.	Reference No.	Name.	Reference No.
		Director, officer, or stockholder.	Name.				
Baker, George F.	United States.	Director.	Lehigh & Wilkes-Barre Coal Co.	Director.	11	Colorado & Southern Ry. Co.	
				Stockholder.		Del., Lackawanna & Western R.R. Co.	
				Director.		Dunkirk, Allegheny Val. & Pgh. Ry. Co.	
				do.	14	Erle R. R. Co.	
				Stockholder.	18	Great Northern Ry. Co.	
				Director.		Lake Erie & Western R. R. Co.	
				Director and stockholder.	24	Lake Shore & Mich. Sed. Ry. Co.	
				Director.		Lehigh Valley R. R. Co.	
				Stockholder.	30	Michigan Central R. R. Co.	
				Director.	29	New York Cent. & Hud. Riv. R. Co.	
				Director.	36	New York, New Hav. & Hart. R. Co.	
				do.		New York, Susq. & Western R. Co.	
				Director and stockholder.	63	Northern Central Ry. Co.	
				Director.	46	Northern Pacific Ry. Co.	
				Stockholder.	53	Pennsylvania R. R. Co.	
				Director.	74	Philadelphia & Reading Ry. Co.	
				do.	33	Rutland R. R. Co.	
				Stockholder.	91	Southern Ry. Co.	
				do.	54	Balto., Ches. & Atlantic Ry. Co.	
				do.	72	Central Railroad Co. of New Jersey.	
				do.	10	Chesapeake & Ohio Ry. Co.	
				do.		Colorado & Southern Ry. Co.	
				do.	14	Erle R. R. Co.	
				do.	21	Illinois Central R. R. Co.	
				do.	24	Lehigh Valley R. R. Co.	
Bullitt, estate of John C.	do.	Stockholder.	do.				
Central R. R. Co. of New Jersey.	do.	do.	do.				
Dodd, Allison.	do.	do.	do.				
Gilard Trust Co. ¹ (American Transportation Co.).	do.	do.	do.				

RELATIONS BETWEEN CARRIERS BY RAIL AND BY WATER.

[illegible]

¹ Interested in or connected with Lehigh & Wilkes-Barre Coal Co., Lehigh Valley Transportation Co., and rail carriers shown in last column opposite company first mentioned.

Walker, W. W.	do.	Director and officer.	do.	Director and officer.	98	Duluth, So. Shore & Atlantic Ry. Co.
Wood, W. B.	do.	Director.	do.	do.	59	Mineral Range R. R. Co.
Mallory, Henry R.	do.	Director and officer.	Mallory Steamship Co.	Officer.		Grand Rapids & Indiana Ry. Co.
Mallory, Robert	do.	Director.	do.	do.	38	
Thompson, Towle & Co.	do.	Stockholder.	do.	Stockholder.	11	Boston & Maine R. R. Co.
				do.	98	Del. Lackawanna & Western R. R. Co.
				do.		Duluth, So. Shore & Atlantic Ry. Co.
				do.	14	Erie R. R. Co.
				do.	18	Great Northern Ry. Co.
				do.	21	Illinois Central R. R. Co.
				do.		Kansas City Southern Ry. Co.
				do.	36	New York, New Hav. & Hart. R. R. Co.
				do.	48	Northern Pacific Ry. Co.
				do.	75	Seaboard Air Line Ry.
				do.		Bessemer & Lake Erie R. R. Co.
Behrd, F. C.	do.	Officer.	Marquette & Bessemer Dock & Nav. Co.	Director.	69	Do.
Blackburn, W. W.	do.	Director.	do.	Director and officer.	69	Pere Marquette R. R. Co.
Blair, F. W.	do.	do.	do.	do.	69	Do.
Clemson, D. M.	do.	do.	do.	Director.		Bessemer & Lake Erie R. R. Co.
Felton, S. M.	do.	do.	do.	Officer.		Do.
Mahill, C. J.	do.	Officer.	do.	Director and Officer.		Do.
Reed, J. H.	do.	Director.	do.	do.	69	Pere Marquette R. R. Co.
Uttley, E. H.	do.	do.	do.	Officer.	18	Great Northern Ry. Co.
Waller, E. N.	do.	Officer.	do.	Stockholder.	36	New York, New Hav. & Hart. R. R. Co.
Atherton, J. B., estate, Ltd.	Hawaii.	Stockholder.	Matson Navigation Co.	do.	53	Pennsylvania R. R. Co.
				do.	79	Southern Pacific Co.
				do.	83	Union Pacific R. R. Co.
				do.	38	Boston & Maine R. R. Co.
Adams, Francis, Emmit, Alex. W., Rackeman, Chas. S., trustees.	United States.	do.	Merchants & Miners Transportation Co.	do.		
Baltimore Equitable Society.	do.	do.	do.	do.	18	Great Northern Ry. Co.
				do.	36	New York, New Hav. & Hart. R. R. Co.
				do.	53	Pennsylvania R. R. Co.
				do.	36	New York, New Hav. & Hart. R. R. Co.

¹ See note 1, page 43.
² Interested in or connected with Lehigh Valley Transportation Co., Mutual Transit Co., and rail carrier shown in last column opposite company first mentioned.
³ See note 3, page 27.
⁴ See note 3, page 28.
⁵ See note 5, page 23.
⁶ See note 7, page 27.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Carriers by water.			Interested in or connected with—			Carriers by rail.	
		Director, officer, or stockholder.	Refer- ence No.	Name.	Director, officer, or stockholder.	Refer- ence No.	Name.	Refer- ence No.	Name.
Brooks, W. B.	United States.	Director.		Merchants & Miners Transportation Co.	Stockholder.		Canton R. R. Co.		
Creswell, W. K.	do.	Director and stockholder.		do.	do.		Maryland & Pennsylvania R. R. Co. New York, New Hav. & Hart. R. Co.	36	
James, Norman Jenkins, George C.	do. do.	Stockholder.		do.	do.		Northern Central Ry. Co.	63	
Jenkins, Michael. Johns Hopkins University.	do. do.	Director. Stockholder.		do.	Stockholder.		Atlantic Coast Line R. R. Co. Canton R. R. Co.	2	
Kennedy, Wm. C.	do.	Director.		do.	do.		Maryland & Pennsylvania R. R. Co. New York, New Hav. & Hart. R. Co.	36	
Keyser, J. Brent. Mercantile Trust & Deposit Co. of Baltimore, Md.	do. do.	do. Stockholder.		do.	do.		Pennsylvania R. R. Co. Northern Central Ry. Co.	63	
Miller, Decatur H., Jr.	do.	Director and stockholder.		do.	Director.		Northern Central Ry. Co. Atlantic Coast Line R. R. Co.	63	
Miller, Lawrence V.	do.	Stockholder.		do.	do.		Atlantic Coast Line R. R. Co. New York, New Hav. & Hart. R. Co.	1	
Poe & Davis.	do.	do.		do.	do.		Atlantic Coast Line R. R. Co. New York, New Hav. & Hart. R. Co.	2	
							Southern Ry. Co. Northern Central Ry. Co.	36	
							New York, New Hav. & Hart. R. Co. R. Co.	91	
							Erie R. R. Co. Maryland & Pennsylvania R. R. Co.	36	
								14	

[illegible]

¹ See note 8, page 31.

* Interested in or connected with Merritt & Chapman Derrick & Wrecking Co., Old Dominion S. S. Co., and rail carriers shown in last column opposite company first mentioned.

¹ See note 4, page 35.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—					
		Carriers by water.		Carriers by rail.			
		Director, officer, or stockholder.	Refer- ence No.	Name.	Director, officer, or stockholder.	Refer- ence No.	Name.
Fahnestock, J. F.	United States.	Officer.....	.....	Montauk Steamboat Co., Ltd.	Officer.....	54	Balto., Ches. & Atlantic Ry. Co.
Hall, F. E.	do.	do.		do.	do.	55	Del., Md. & Va. R. R. Co.
Keane, J. F.	do.	do.		do.	do.	56	Long Island R. R. Co.
Langdon, A. L.	do.	do.		do.	do.	57	Long Island R. R. Co.
Newbern, R. H.	do.	do.		do.	do.	58	Md., Del. & Va. Ry. Co.
Peters, Ralph	do.	do.		do.	do.	59	New York, Phila. & Norfolk R. R. Co.
Stockton, E. A.	do.	Director and officer.		do.	do.	60	do.
Chambers, A. D.	do.	Officer.....	12	Moore Timber Co.	do.	60	do.
Jenney, W. S.	do.	do.		do.	do.	60	do.
Loomis, E. E.	do.	Stockholder.....		do.	do.	11	Del., Lackawanna & Western R. Co.
Ray, G. J.	do.	do.		do.	do.	11	R. Co.
Truesdale, W. H.	do.	do.		do.	do.	11	do.
New York Central & Hudson River Railroad Company.	do.	Director and officer.		do.	do.	11	do.
	do.	Stockholder.....	31	Mutual Terminal Co. of Buffalo.	do.	11	Pacific & Idaho Northern Ry. Co.
					Stockholder.....		Dunkirk, Allegheny Val. & Pgh. R. Co.
					do.		R. R. Co.
					do.		Lake Shore & Mich. Sou. Ry. Co.
					do.	30	Michigan Central R. R. Co.
					do.	30	New York, New Hav. & Hart. R. R. Co.
					do.	36	do.
					do.		Rutland R. R. Co.
					do.	23	Chicago, Indiana & Sou. Ry. Co.
					Officer.....		Lake Shore & Mich. Sou. Ry. Co.
					do.		Michigan Central R. R. Co.
					do.		New York, New Hav. & Hart. R. R. Co.
					do.		Rutland R. R. Co.
					do.		Chicago, Indiana & Sou. Ry. Co.
					do.		Lake Shore & Mich. Sou. Ry. Co.
					do.		Michigan Central R. R. Co.
Carstensen, John	do.	Director.....	22	Mutual Transit Co.	do.	30	Michigan Central R. R. Co.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—			Carriers by rail.		
		Carriers by water.		Director, officer, or stockholder.	Refer- ence No.	Name.	
		Director, officer, or stockholder.	Refer- ence No.				
Cuyler, T. De Wist.	United States	Director		Stockholder	60	Long Island R. R. Co.	
Killett, Howard	do	Director and officer		Director	26	Maine Central R. R. Co.	
Hemlockway, Jas. S.	do	Director		do	36	New York, New Hav. & Hart. R. R. Co.	
Mey, A. S.	do	do		do	44	New York, Ontario & Western Ry. Co.	
New York, New Hav. & Hart. R. R. Co.	do	Stockholder		do	53	Pennsylvania R. R. Co.	
		Stockholder		do	33	Rutland R. R. Co.	
		Stockholder		do	37	Boston R. R. Holding Co.	
		do		do	44	Central New England Ry. Co.	
		do		do	23	New York, Ontario & Western Ry. Co.	
Pratt, John T.	do	Director		do	36	Rutland R. R. Co.	
Beckwith, William	do	do		do	11	New York, New Hav. & Hart. R. R. Co.	
		do		do		Central New England Ry. Co.	
		do		do		Del. Lackawanna & Western R. R. Co.	
		do		do		Dunkirk, Allegheny Val. & Pgh. R. R. Co.	
		do		do		Lake Erie & Western R. R. Co.	
		do		do	36	Michigan Central R. R. Co.	
		do		do	36	New York Cent. & Hud. Riv. R. R. Co.	
		do		do	44	New York, New Hav. & Hart. R. R. Co.	
		do		do	44	New York, Ontario & West. Ry. Co.	
		do		do	96	Oregon Short Line R. R. Co.	
		do		do	96	Oregon-Washington R. R. & Nav. Co.	

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—			Carriers by rail.		
		Carriers by water.		Director, officer, or stockholder.	Refer- ence No.	Name.	Refer- ence No.
Mallory, Henry R. ¹	United States.	Director and officer.	New York & Porto Rico S. S. Co.	Stockholder.		Colorado & Southern Ry. Co.	
Mooney, Franklin D.	do.	do.	do.	do.			
New York Trust Co. ¹	do.	Stockholder.	Nile Steamship Co.	Stockholder.		Lehigh Valley R. R. Co.	24
Southern Pacific Co. ¹	do.	Director.	Norfolk & Washington Steamboat Co.	do.		Atlantic Coast Line R. R. Co.	2
Boyd, John.	do.	Stockholder.	do.	do.		Louisville & Nashville R. R. Co.	3
Kann, Sons & Co.	do.	do.	do.	do.		Northern Pacific Ry. Co.	48
				do.		Seaboard Air Line Ry.	75
				do.		Southern Pacific Co.	79
				do.		Union Pacific R. R. Co.	93
				do.		New York Cent. & Hud. Riv. R. R. Co.	29
United States Express Co.	do.	do.	do.	do.		Pennsylvania R. R. Co.	53
				do.		Norfolk & Western Ry. Co.	45
Woodbury, Levi.	do.	Director, officer, and stockholder.	do.	do.		Pennsylvania R. R. Co.	53
Great Northern Ry. Co. ¹	do.	Stockholder.	Northern Steamship Co.	do.			
Hill, Louis W. ¹	do.	Director.	do.	do.			
Jackson, R. A. ¹	do.	Director and officer.	do.	do.			
Katsenbach, L. E. ¹	do.	Director.	do.	do.			
Kenny, W. P. ¹	do.	Director.	do.	do.			
Lindley, E. C. ¹	do.	Director and officer.	do.	do.			
Martin, G. R. ¹	do.	Officer.	Ocean Steamship Co. of Savannah	Officer.	22	Central of Georgia Ry. Co.	
Ashaw, W. C.	do.	do.	do.	do.		Do.	
Byrner, W. D.	do.	do.	do.	do.		Do.	
Johnson, H. W.	do.	Director.	do.	Stockholder.		Md., Del. & Va. Ry. Co.	22
Lane, M. B.	do.	Officer.	do.	Director.		Central of Georgia Ry. Co.	53
Lawton, A. R.	do.	Director.	do.	Officer.		Do.	22
Lawton & Cunningham.	do.	Director.	do.	Director.		Central of Georgia Ry. Co.	22
Lovett, E. S.	do.	do.	do.	do.		Cleve., Cin., Chi. & St. Louis Ry. Co.	23
				do.		Delaware & Hudson Co.	

Marlham, C. H.	do.	Director and officer.	do.	holder. Director.	20	Lake Erie & Western R. R. Co.
				do.	20	Michigan Central R. R. Co.
				Director and stockholder.		New York Cent. & Hud. Riv. R. R. Co.
				Director.	94	New York Susq. & West. R. R. Co.
				Director and officer.	95	Oregon Short Line R. R. Co.
				Director.		Oregon & Washington R. R. & Nav. Co.
				do.		San Pedro, Los Ang. & Salt Lake R. R. Co.
				Director and officer.	93	Union Pacific R. R. Co.
				Director.	92	Yazoo & Miss. Valley R. R. Co.
				do.	72	Central of Georgia Ry. Co.
				Director, officer, and stockholder.	21	Central Railroad Co. of New Jersey.
				do.		Illinois Central R. R. Co.
				Director and officer.	22	Yazoo & Miss. Valley R. R. Co.
				Officer.	21	Central of Georgia Ry. Co.
				Director.	22	Central of Georgia Ry. Co.
				Stockholder.	2	Atlantic Coast Line Ry. Co.
				do.	45	Norfolk & Western Ry. Co.
				Stockholder.		Hocking Valley Ry. Co.
				do.		Louisv. & Jeffersonville Bridge Co.
				Stockholder.	10	Chesapeake & Ohio Ry. Co.
				do.	45	Norfolk & Western Ry. Co.
				Stockholder.	66	Del., Md. & Va. R. R. Co.
				Stockholder.		Mobile & Ohio R. R. Co.
				Director and officer.	2	Atlantic Coast Line R. R. Co.
				do.	3	Louisville & Nashville R. R. Co.
				Stockholder.	45	Pelaware & Hudson Co.
				do.	48	Norfolk & Western Ry. Co.
				do.	53	Northern Pacific Ry. Co.
				do.		Pennsylvania R. R. Co.
				Officer.	8	Buff., Rochester & Pgh. Ry. Co.
				Director.	8	Do.
				do.		Reynoldsville & Falls Creek R. R. Co.

* See note 2, page 31.

* See note 3, page 31.

* See note 4, page 20.

* See note 2, page 47.

* See note 5, page 31.

* See note 7, page 31.

* See note 5, page 23.

* See note 1, page 39.

* See note 3, page 20.

* See note 5, page 20.

Chamberlin, E. J.¹Darymp, J. E.²Davis, R. W.³Kaly, Edward G.¹⁰

Nodman, W. T.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—				Carriers by rail.		
		Carriers by water.		Director, officer, or stockholder.		Refer- ence No.	Director, officer, or stockholder.	Refer- ence No.
O'Donnell, Iselin.....	United States.	Director.....	Ontario Car Ferry Co.....	Officer.....	.....	8	Buff., Rochester & Pgh. Ry. Co.	.....
Scott, Frank.....	Canada.....	Officer.....	do.....	.....	.....	.....	Nevada Northern Ry. Co.	.....
Smith, W. H. A.....	do.....	Director.....	Pacific-Alaska Navigation Co.....	Stockholder.....	.....	.....	Chicago, Rock Island & Pac. Ry. Co.	.....
Jackling, D. C.....	United States.....	Stockholder.....	do.....	do.....	.....	69	Pere Marquette R. R. Co.	.....
Jones, C. H.....	do.....	.....	.....	.....	.....	91	Southern Ry. Co.	.....
Barnum, Wm.....	do.....	Director.....	Pacific Coast Steamship Co.....	Director and officer.....	.....	18	Great Northern Ry. Co.	.....
Cooper, J. H.....	do.....	do.....	do.....	Director.....	.....	.....	Pacific Coast Ry. Co.	.....
Dumann, C. D.....	do.....	Director and officer.....	do.....	Officer.....	.....	95	Columbia & Puget Sound R. R. Co.	.....
Farrell, Kane & Stratton.....	do.....	Officers.....	do.....	do.....	.....	.....	Oregon-Washington R. R. & Nav. Co.	.....
Ford, J. C.....	do.....	Director and officer.....	do.....	do.....	.....	.....	Pacific Coast Ry. Co.	.....
Goodall, A.....	do.....	Director.....	do.....	Director.....	.....	.....	Columbia & Puget Sound R. R. Co.	.....
Goodall, C. M.....	do.....	Director and officer.....	do.....	Director and officer.....	.....	.....	Pacific Coast Ry. Co.	.....
Higbee, G. H.....	do.....	Stockholder.....	do.....	Stockholder.....	.....	.....	Columbia & Puget Sound R. R. Co.	.....
Pacific Coast Co.....	do.....	Director and officer.....	do.....	Director and officer.....	.....	.....	Pacific Coast Ry. Co.	.....
Smith, J. W.....	do.....	do.....	do.....	do.....	.....	.....	Oregon-Washington R. R. & Nav. Co.	.....
Towle, G. W.....	do.....	do.....	do.....	do.....	.....	95	Pacific Coast Ry. Co.	.....
Becke & Co., J. S.....	do.....	Stockholder.....	Pacific Mail Steamship Co.....	Officer.....	.....	10	Cheapeake & Ohio Ry. Co.	.....
				Stockholder.....	.....	.....	Clave, Cinn., Chi. & St. Louis Ry. Co.	.....
				do.....	.....	.....	Colorado & Southern Ry. Co.	.....
				do.....	.....	.....	Delaware & Hudson Co.	.....

11	do.....	Del., Lackawanna & Western R. R. Co.
98	do.....	Duluth, So. Shore & Atlantic Ry. Co.
14	do.....	Erie R. R. Co.
15	do.....	Great Northern Ry. Co.
16	do.....	Kansas City Southern Ry. Co.
17	do.....	Lake Erie & Western R. R. Co.
18	do.....	Lehigh Valley R. R. Co.
19	do.....	Long Island R. R. Co.
20	do.....	Louisville & Nashville R. R. Co.
21	do.....	Minn. St. Paul & S. M. Ry. Co.
22	do.....	New York Cent. & Hud. Riv. R. R. Co.
23	do.....	New York, Ontario & Western Ry. Co.
24	do.....	Norfolk & Western Ry. Co.
25	do.....	Norfolk & Western Ry. Co.
26	do.....	Norfolk & Western Ry. Co.
27	do.....	Norfolk & Western Ry. Co.
28	do.....	Norfolk & Western Ry. Co.
29	do.....	Norfolk & Western Ry. Co.
30	do.....	Norfolk & Western Ry. Co.
31	do.....	Norfolk & Western Ry. Co.
32	do.....	Norfolk & Western Ry. Co.
33	do.....	Norfolk & Western Ry. Co.
34	do.....	Norfolk & Western Ry. Co.
35	do.....	Norfolk & Western Ry. Co.
36	do.....	Norfolk & Western Ry. Co.
37	do.....	Norfolk & Western Ry. Co.
38	do.....	Norfolk & Western Ry. Co.
39	do.....	Norfolk & Western Ry. Co.
40	do.....	Norfolk & Western Ry. Co.
41	do.....	Norfolk & Western Ry. Co.
42	do.....	Norfolk & Western Ry. Co.
43	do.....	Norfolk & Western Ry. Co.
44	do.....	Norfolk & Western Ry. Co.
45	do.....	Norfolk & Western Ry. Co.
46	do.....	Norfolk & Western Ry. Co.
47	do.....	Norfolk & Western Ry. Co.
48	do.....	Norfolk & Western Ry. Co.
49	do.....	Norfolk & Western Ry. Co.
50	do.....	Norfolk & Western Ry. Co.
51	do.....	Norfolk & Western Ry. Co.
52	do.....	Norfolk & Western Ry. Co.
53	do.....	Norfolk & Western Ry. Co.
54	do.....	Norfolk & Western Ry. Co.
55	do.....	Norfolk & Western Ry. Co.
56	do.....	Norfolk & Western Ry. Co.
57	do.....	Norfolk & Western Ry. Co.
58	do.....	Norfolk & Western Ry. Co.
59	do.....	Norfolk & Western Ry. Co.
60	do.....	Norfolk & Western Ry. Co.
61	do.....	Norfolk & Western Ry. Co.
62	do.....	Norfolk & Western Ry. Co.
63	do.....	Norfolk & Western Ry. Co.
64	do.....	Norfolk & Western Ry. Co.
65	do.....	Norfolk & Western Ry. Co.
66	do.....	Norfolk & Western Ry. Co.
67	do.....	Norfolk & Western Ry. Co.
68	do.....	Norfolk & Western Ry. Co.
69	do.....	Norfolk & Western Ry. Co.
70	do.....	Norfolk & Western Ry. Co.
71	do.....	Norfolk & Western Ry. Co.
72	do.....	Norfolk & Western Ry. Co.
73	do.....	Norfolk & Western Ry. Co.
74	do.....	Norfolk & Western Ry. Co.
75	do.....	Norfolk & Western Ry. Co.
76	do.....	Norfolk & Western Ry. Co.
77	do.....	Norfolk & Western Ry. Co.
78	do.....	Norfolk & Western Ry. Co.
79	do.....	Norfolk & Western Ry. Co.
80	do.....	Norfolk & Western Ry. Co.
81	do.....	Norfolk & Western Ry. Co.
82	do.....	Norfolk & Western Ry. Co.
83	do.....	Norfolk & Western Ry. Co.
84	do.....	Norfolk & Western Ry. Co.
85	do.....	Norfolk & Western Ry. Co.
86	do.....	Norfolk & Western Ry. Co.
87	do.....	Norfolk & Western Ry. Co.
88	do.....	Norfolk & Western Ry. Co.
89	do.....	Norfolk & Western Ry. Co.
90	do.....	Norfolk & Western Ry. Co.
91	do.....	Norfolk & Western Ry. Co.
92	do.....	Norfolk & Western Ry. Co.
93	do.....	Norfolk & Western Ry. Co.
94	do.....	Norfolk & Western Ry. Co.
95	do.....	Norfolk & Western Ry. Co.
96	do.....	Norfolk & Western Ry. Co.
97	do.....	Norfolk & Western Ry. Co.
98	do.....	Norfolk & Western Ry. Co.
99	do.....	Norfolk & Western Ry. Co.
100	do.....	Norfolk & Western Ry. Co.

* See note 2, page 30.

* See note 3, page 31.

* See note 4, page 31.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—			
		Carriers by water.		Carriers by rail.	
		Director, officer, or stockholder.	Refer- ence No.	Name.	Refer- ence No.
Clerk & Co., Henry.	United States.	Stockholder.		Pacific Mail Steamship Co.	
		do.		do.	2
		do.		do.	10
		do.		do.	
		do.		do.	
		do.		do.	96
		do.		do.	14
		do.		do.	18
		do.		do.	21
		do.		do.	
		do.		do.	24
De Coppel & Doremus.	do.	do.		do.	3
		do.		do.	36
		do.		do.	44
		do.		do.	45
		do.		do.	48
		do.		do.	53
		do.		do.	75
		do.		do.	79
		do.		do.	91
		do.		do.	98
		do.		do.	8
		do.		do.	10
		do.		do.	
		do.		do.	
		do.		do.	
		do.		do.	
		do.		do.	
		do.		do.	
		do.		do.	
		do.		do.	
		do.		do.	
		do.		do.	11

Halle & Stueglin.....	do.....	do.....	do.....	do.....	2	Atlantic Coast Line R. R. Co.
	do.....	do.....	do.....	do.....	72	Central Railroad Co. of New Jersey.
	do.....	do.....	do.....	do.....	10	Chesapeake & Ohio Ry. Co.
	do.....	do.....	do.....	do.....	14	Colorado & Southern Ry. Co.
	do.....	do.....	do.....	do.....	18	Erle R. R. Co.
	do.....	do.....	do.....	do.....	21	Great Northern Ry. Co.
	do.....	do.....	do.....	do.....	21	Illinois Central R. R. Co.
	do.....	do.....	do.....	do.....	21	Kansas City Southern Ry. Co.
	do.....	do.....	do.....	do.....	21	Lake Erie & Western R. R. Co.
	do.....	do.....	do.....	do.....	21	Minn., St. Paul & S. M. Ry. Co.
	do.....	do.....	do.....	do.....	36	New York, New Hav. & Hart, R. Co.
	do.....	do.....	do.....	do.....	44	New York, Ontario & Western Ry. Co.
	do.....	do.....	do.....	do.....	48	Northern Pacific Ry. Co.
	do.....	do.....	do.....	do.....	75	Peoria & Eastern Ry. Co.
	do.....	do.....	do.....	do.....	79	Seaboard Air Line Ry.
	do.....	do.....	do.....	do.....	93	Texas & Pacific Ry. Co.
	do.....	do.....	do.....	do.....	10	Union Pacific R. R. Co.
	do.....	do.....	do.....	do.....	10	Chesapeake & Ohio Ry. Co.
	do.....	do.....	do.....	do.....	98	Colorado & Southern Ry. Co.
Harris, Whitrop & Co.....	do.....	do.....	do.....	89	Delaware & Hudson Co.	
	do.....	do.....	do.....	do.....	14	Duluth, So. Shore & Atlantic Ry. Co.
	do.....	do.....	do.....	do.....	14	Erle R. R. Co.
	do.....	do.....	do.....	do.....	18	Great Northern Ry. Co.
	do.....	do.....	do.....	do.....	18	Kansas City Southern Ry. Co.
	do.....	do.....	do.....	do.....	3	Louisville & Nashville R. R. Co.
	do.....	do.....	do.....	do.....	3	Minn., St. Paul & S. M. Ry. Co.
	do.....	do.....	do.....	do.....	29	New York Cent. & Hud. Riv. R. R. Co.
	do.....	do.....	do.....	do.....	36	New York, New Hav. & Hart, R. R. Co.
	do.....	do.....	do.....	do.....	44	New York, Ontario & Western Ry. Co.
	do.....	do.....	do.....	do.....	45	Norfolk & Western Ry. Co.
	do.....	do.....	do.....	do.....	48	Northern Pacific Ry. Co.
	do.....	do.....	do.....	do.....	53	Pennsylvania R. R. Co.
	do.....	do.....	do.....	do.....	53	Peoria & Eastern Ry. Co.
	do.....	do.....	do.....	do.....	75	Seaboard Air Line Ry.
	do.....	do.....	do.....	do.....	79	Seaboard Air Line Ry.
	do.....	do.....	do.....	do.....	91	Southern Ry. Co.
	do.....	do.....	do.....	do.....	91	Southern Ry. Co.
	do.....	do.....	do.....	do.....	93	Texas & Pacific Ry. Co.
do.....	do.....	do.....	do.....	93	Union Pacific R. R. Co.	
do.....	do.....	do.....	do.....	93	Western Pacific R. R. Co.	
Hiscock, Frank H.....	do.....	do.....	do.....	do.....	36	Wisconsin Central Ry. Co.
	do.....	do.....	do.....	do.....	36	New York, New Hav. & Hart, R. R. Co.
	do.....	do.....	do.....	do.....	91	Southern Ry. Co.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—			Carriers by rail.		
		Carriers by water.		Director, officer, or stockholder.	Refer- ence No.	Name.	Name.
		Director, officer, or stockholder.	Refer- ence No.				
Hudson & Co., C. I.	United States.	Stockholder.		Stockholder.	2	Atlantic Coast Line R. R. Co.	
				do.	10	Chesapeake & Potomac R. R. Co.	
				do.		Colorado & Southern Ry. Co.	
				do.		Delaware & Hudson Co.	
				do.	98	Duluth, So. Shore & Atlantic Ry. Co.	
				do.	14	Erie R. R. Co.	
				do.	18	Great Northern Ry. Co.	
				do.		Kansas City Southern Ry. Co.	
				do.		Lake Erie & Western R. R. Co.	
				do.	24	Lehigh Valley R. R. Co.	
				do.	60	Long Island R. R. Co.	
				do.	3	Louisville & Nashville R. R. Co.	
				do.		Minn. St. Paul & S. M. Ry. Co.	
				do.	29	New York Cent. & Hud. Riv. R. R. Co.	
				do.		Norfolk & Western Ry. Co.	
				do.	48	Northern Pacific Ry. Co.	
				do.	53	Pennsylvania R. R. Co.	
				do.		Penn. & Eastern Ry. Co.	
				do.	75	Seaboard Air Line Ry.	
				do.	79	Southern Pacific Co.	
				do.	91	Southern Ry. Co.	
				do.	93	Union Pacific R. R. Co.	
				do.		Wisconsin Central Ry. Co.	
				Stockholder.		Munising, Marquette & S. E. Ry. Co.	
Kretschmitt, J. I.	do.	Director and officer.		Stockholder.		Erie R. R. Co.	
Land Title & Trust Co. (trustee).	do.	Officer.		Stockholder.	14	Central Railroad Co. of New Jersey.	
McDonald, A. D.	do.	Director.		do.	73	Colorado & Southern Ry. Co.	
Mary, George H.	do.	Stockholder.		do.	11	Del., Lackawanna & Western R. R. Co.	
Manning, John B.	do.			do.	98	Duluth, So. Shore & Atlantic Ry. Co.	
				do.	14	Erie R. R. Co.	

				do.	do.	59	Grand Rapids & Indiana Ry. Co.
				do.	do.	21	Illinois Central R. R. Co.
				do.	do.	24	Lake Erie & Western R. R. Co.
				do.	do.	24	Lehigh Valley R. R. Co.
				do.	do.	60	Long Island R. R. Co.
				do.	do.	29	New York Cent. & Hud. Riv. R. R. Co.
				do.	do.	36	New York, New Hav. & Hart. R. R. Co.
				do.	do.	48	Northern Pacific Ry. Co.
				do.	do.	69	Peoria & Eastern Ry. Co.
				do.	do.	69	Pere Marquette R. R. Co.
				do.	do.	79	Pgh., Westmoreland & Somerset R. R. Co.
				do.	do.	93	Southern Pacific Co.
				Director	do.	93	Union Pacific R. R. Co.
				do.	do.	14	Chicago, Rock Island & Pac. Ry. Co.
				do.	do.	29	Erie R. R. Co.
				do.	do.	48	New York Cent. & Hud. Riv. R. R. Co.
				Stockholder	do.	75	Northern Pacific Ry. Co.
				do.	do.	79	Seaboard Air Line Ry.
				do.	do.	79	Southern Pacific Co.
				Officer	do.	79	Do.
				do.	do.	10	Chesapeake & Ohio Ry. Co.
				Stockholder	do.	10	Cleve., Cin., Chi. & St. Louis Ry. Co.
				do.	do.	14	Delaware & Hudson Co.
				do.	do.	18	Erie R. R. Co.
				do.	do.	18	Great Northern Ry. Co.
				do.	do.	45	Minn. St. Paul & S. M. Ry. Co.
				do.	do.	45	Norfolk & Western Ry. Co.
				do.	do.	75	Northern Pacific Ry. Co.
				do.	do.	79	Seaboard Air Line Ry.
				do.	do.	79	Southern Pacific Co.
				do.	do.	93	Texas & Pacific Ry. Co.
				do.	do.	93	Union Pacific R. R. Co.
				do.	do.	93	Wisconsin Central Ry. Co.
				do.	do.	8	Buff. Rochester & Pittsburgh Ry. Co.
				do.	do.	21	Illinois Central R. R. Co.
				do.	do.	21	Lake Erie & Western R. R. Co.
				do.	do.	36	Minn. St. Paul & S. M. Ry. Co.
				do.	do.	36	New York, New Hav. & Hart. R. R. Co.
				do.	do.	69	Pere Marquette R. R. Co.
				do.	do.	33	Rutland R. R. Co.
				do.	do.	91	Southern Ry. Co.
				do.	do.	91	Wisconsin Central Ry. Co.

* See note 6, page 33.

† See note 2, page 33.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—			Carriers by water.			Carriers by rail.		
		Director, officer, or stockholder.	Reference No.	Name.	Director, officer, or stockholder.	Reference No.	Name.	Director, officer, or stockholder.	Reference No.	Name.
Rodgers & Co., R.	United States.	Stockholder.		Pacific Mail Steamship Co.	Stockholder.		Buff., Rochester & Pittsburgh Ry. Co.	8		
Schwartz, R. P.	do.	Director and officer.		do.	do.		Erie R. R. Co.	14		
Simpson, J. A.	do.	Officer.		do.	do.		Louisiana Western R. R. Co.			
							Morgan's L. & Tex. R. R. & S. S. Co.	86		
Southern Pacific Co.	do.	Stockholder.		do.	do.		Southern Pacific Co.	79		
Spence, L. J.	do.	Director.		do.	do.					
Sternberger, Sins & Co.	do.	Stockholder.		do.	do.		Duluth, So. Shore & Atlantic Ry. Co.	98		
							Erie R. R. Co.	14		
							Kansas City Southern Ry. Co.			
							Lehigh Valley R. R. Co.	24		
							New York Cent. & Hud. Riv. R. R. Co.	29		
							Northern Pacific Ry. Co.	48		
							Seaboard Air Line Ry.	75		
							Southern Pacific Co.	79		
							Texas & Pacific Ry. Co.			
							Union Pacific R. R. Co.	93		
							Wisconsin Central Ry. Co.			
							Southern Pacific Co.	79		
Svensen, P. P.	do.	Director.		do.	do.					
Van Dewater, A. K.	do.	Officer.		do.	do.					
Werthington, W. A.	do.	Director and stockholder.		do.	do.					
Atlantic Coast Line Railroad Company.	do.	Stockholder.	6	Peninsular & Occidental S. S. Co.	Director, officer, or stockholder.		Florida East Coast Ry. Co.	17		
Beardley, W. H.	do.	Director.		do.	do.		Do.	17		
Beckwith, J. P.	do.	Officer.		do.	do.		Do.			
Kenly, J. H.	do.	Director and officer.		do.	do.		Atlantic Coast Line R. R. Co.	17		
Parsons, H. W.	do.	do.		do.	do.					
Plant, M. F.	do.	Director and stockholder.		do.	do.					

[illegible]

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—			Carriers by water.			Carriers by rail.		
		Director, officer, or stockholder.	Reference No.	Name.	Director, officer, or stockholder.	Reference No.	Name.	Director, officer, or stockholder.	Reference No.	Name.
Howell, Lee ¹	United States.	Director.....		St. Louis & Tennessee River Packet Co.	Officer.....		Oregon-Washington R. R. & Nav. Co.			
Blasdel, R.....	do.....	Director and officer.....	96	San Francisco & Portland Steamship Co.	Director.....		Do.			
Cotton, W. W.....	do.....	Director.....		do.....	Officer.....		Oregon Short Line R. R. Co.			
Crosby, F. V. S.....	do.....	Officer.....		do.....	do.....		Oregon-Washington R. R. & Nav. Co.			
Farrell, J. D.....	do.....	Director and officer.....		do.....	do.....		Union Pacific R. R. Co.			
McMurray, Wm.....	do.....	Officer.....		do.....	Director and officer.....		Oregon-Washington R. R. & Nav. Co.			
Meyer, J. P.....	do.....	do.....		do.....	Officer.....		Do.			
O'Brien, J. P.....	do.....	Director and officer.....		do.....	do.....		Do.			
Spencer, A. C.....	do.....	do.....		do.....	do.....		Do.			
Conroy, A. J.....	do.....	Director.....	67	Susquehanna Coal Co.	Director.....		Do.			
Green, John P. ¹	do.....	do.....		do.....	Director and officer.....	54	Balto. Ches. & Atlantic Ry. Co.			
Pennsylvania R. R. Co. ¹	do.....	Stockholder.....		do.....	Officer.....	65	Del. Md. & Va. R. R. Co.			
Pottsville, E. T.....	do.....	Director.....		do.....	Director.....	65	Delaware R. R. Co.			
Shortridge, N. Parker.....	do.....	do.....		do.....	Officer.....	60	Long Island R. R. Co.			
					Director.....	62	Md. Del. & Va. Ry. Co.			
					Director and officer.....	53	New York, Phila. & Norfolk R. R. Co.			
					Officer.....	53	Pennsylvania R. R. Co.			
Green, John P. ¹	do.....	do.....		do.....	Officer.....		Do.			
Pennsylvania R. R. Co. ¹	do.....	Stockholder.....		do.....	Officer.....	53	Grand Rapids & Indiana Ry. Co.			
Pottsville, E. T.....	do.....	Director.....		do.....	Stockholder.....	59	Northern Central Ry. Co.			
Shortridge, N. Parker.....	do.....	do.....		do.....	do.....	63	Pennsylvania R. R. Co.			
					do.....	53	Phila., Balto. & Wash. R. R. Co.			
					do.....	64	West Jersey & Seashore R. R. Co.			
					do.....	68	Norfolk & Western Ry. Co.			
Tatnall, Henry ¹	do.....	do.....		do.....	Stockholder.....	45	Chesapeake & Ohio Ry. Co.			
Williams, J. Randall.....	do.....	Director.....		do.....	do.....	10				

Matlack, Wm. C.	do	Director, officer, and stockholder.	Trenton Transportation Co.	do	Kansas City Southern Ry. Co.
	do	do	do	do	Lehigh Valley R. R. Co.
	do	do	do	do	Northern Pacific Ry. Co.
	do	do	do	do	Southern Pacific Co.
Schwerin, R. P. ¹	do	Stockholder	Tyce Co.	Director	Cleve., Cinn., Chi. & St. Louis Ry. Co.
Cartmensen, John ¹	do	Director and officer	Western Transit Co.	do	Delaware & Hudson Co.
Dagow, C. M.	do	Director	do	do	Dunkirk, Allegheny Val. & Pgh. R. R. Co.
Marble, A. H.	do	do	do	do	Lake Shore & Mich. Sou. Ry. Co.,
	do	do	do	do	Michigan Central R. R. Co.
	do	do	do	do	New York Cent. & Hud. Riv. R. R. Co.
	do	do	do	do	Chicago, Indiana & Sou. R. R. Co.
Newman, William H.	do	do	do	do	Cincinnati Northern R. R. Co.
	do	do	do	do	Cleve., Cinn., Chi. & St. Louis Ry. Co.
	do	do	do	do	Dunkirk, Allegheny Val. & Pgh. R. R. Co.
	do	do	do	do	Lake Shore & Michigan Sou. Ry. Co.
New York Central & Hudson River Railroad Co. ¹	do	Stockholder	do	do	New York Cent. & Hud. Riv. R. R. Co.
	do	do	do	do	Peoria & Eastern Ry. Co.
	do	do	do	do	Zanesville & Western Ry. Co.
	do	do	do	do	Cincinnati Northern R. R. Co.
Pardee, D. W.	do	Director	do	do	Chicago, Indiana & Southern R. R. Co.
Pollock, W. B.	do	do	do	do	Cleve., Cinn., Chi. & St. Louis Ry. Co.
Rosier, Edward L. ¹	do	do	do	do	Dunkirk, Allegheny Val. & Pgh. R. R. Co.
Smith, Alvin H. ¹	do	Director and officer	do	do	Lake Erie & Western R. R. Co.
Vanderbilt, Wm. K., Jr. ¹	do	Director	do	do	Lake Shore & Mich. Sou. Ry. Co.
	do	do	do	do	Michigan Central R. R. Co.
	do	do	do	do	New York Cent. & Hud. Riv. R. R. Co.
	do	do	do	do	Rutland R. R. Co.
	do	do	do	do	Toledo & Ohio Central Ry. Co.
	do	do	do	do	New York Cent. & Hud. Riv. R. R. Co.

¹ See note 4, page 65.¹ See note 3, page 49.¹ See note 4, page 49.¹ See note 3, page 25.¹ See note 1, page 37.¹ See note 3, page 37.

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914—Continued.

Individual or company.	Address.	Interested in or connected with—			Carriers by rail.		
		Carriers by water.		Director, officer, or stockholder.	Reference No.	Director, officer, or stockholder.	Reference No.
		Director, officer, or stockholder.	Name.				
Vanderbilt, Wm. K.	United States.	Director	Western Transit Co.	Stockholder	11	Cleve., Cin., Chi. & St. Louis Ry. Co.	
				.....do.....		Del., Lackawanna & Western R. R. Co.	
				Director and stockholder.		Dunkirk, Allegheny Val. & Pgh. R. R. Co.	
				Stockholder		Lake Erie & Western R. R. Co.	
				Director and stockholder.		Lake Shore & Michigan Sou. Ry. Co.	
				Director	30	Michigan Central R. R. Co.	
				Director and stockholder.	29	New York Cent. & Hud. Riv. R. R. Co.	
				Stockholder	33	Rutland R. R. Co.	
White, R. A. ....	.....do.....	Officer .....	.....do.....	Officer	29	New York Cent. & Hud. Riv. R. R. Co.	

EXHIBIT 3.

EXPLANATORY NOTE.

Exhibit 3 shows the names of carriers by water which on June 30, 1914, had no corporate relation to carriers by rail, but which were operated in community of interest with railroads through interlocking stocks, directors, or officers. The names of the water carrier companies have been arranged alphabetically with the exception of the five steamship companies forming the Atlantic, Gulf, and West Indies steamship lines, which are indented to show their intercorporate relation to the parent company.

The names of rail carriers with which any particular water carrier shown in this exhibit is operated in community of interest through interlocking stocks, directorates, or officers may be ascertained by reference to Exhibit 2.

Water carriers not in corporate relation to carriers by rail, but operated in community of interest with railroads through interlocking stocks, directors, or officers on June 30, 1914.

Name.	Vessels owned and operated.						Waters traversed.	From—	To—
	Steam vessels.		Sailing vessels, barges.		Total.				
	Num-ber.	Gross tonnage.	Num-ber.	Gross tonnage.	Num-ber.	Gross tonnage.			
Alaska Steamship Co.	13	23,319			13	23,319	Pacific Ocean.	Seattle, Wash.	Knik, Alaska.
Albemarle Steam Navigation Co.	3	913			3	913	Chowan River.	Franklin, Va.	Edenton, N. C.
American-Asiatic Steamship Co.	15	26,701			15	26,701	Atlantic Ocean, Mediter- ranean Sea, Suez Canal, and Indian Ocean.	New York, N. Y., Boston, Mass.	Orient ports.
American-Hawaiian Steamship Co. ¹	25	170,400			25	170,400	Atlantic and Pacific oceans.	Atlantic ports.	Pacific ports.
Atlantic & Pacific Steamship Co.	4	24,008			4	24,008	do.	do.	Do.

* Owners but does not operate 1 steam vessel referred to in note 13 on page 71.

* Chartered from owners not shown in this table.

Water carriers not in corporate relation to carriers by rail, but operated in community of interest with railroads through interlocking stocks, directors, or officers on June 30, 1914—Continued.

Name.	Vessels owned and operated.				Waters traversed.	From—	To—	
	Steam vessels.		Sailing vessels, barges.					Total.
	Num-ber.	Gross tonnage.	Num-ber.	Gross tonnage.				
Atlantic, Gulf & West Indies steamship lines: ¹								
Clyde Steamship Co. ²	• 27	61,893			Atlantic Ocean.	New York, N. Y.	Atlantic ports.	
Mallory Steamship Co. ⁴	• 14	46,669			Atlantic Ocean and Gulf of Mexico.	do.	Galveston, Tex.	
New York & Cuba Mail S. S. Co. (Ward line).	• 16	65,889			do.	do.	Cuba and Mexican ports.	
New York & Porto Rico S. S. Co.	• 14	46,388			do.	New York, N. Y., and New Orleans, La.	Cuba, Porto Rico, and Canal Zone.	
Southern Steamship Co.	• 8	19,547			do.	Philadelphia, Pa.	Gulf of Mexico ports.	
Atlas Transportation Co.	1	334	• 5	1,489	Mississippi River and adjacent waters.	Points on Mississippi River.		
Beattie, John, estate of.			• 3	415	Long Island Sound.	Long Island.	Long Island ports.	
Benedict, Hanson Marine Co.			• 15	13,720	Atlantic Ocean.	Atlantic Ocean ports.	Atlantic Ocean ports.	
Bennetts North Carolina line.	3	169			Atlantic Ocean and adjacent waters.	Norfolk, Va.	New York, Philadelphia, and Baltimore.	
Boston & Yarmouth Steamship Co.	3	5,774			Atlantic Ocean.	Boston, Mass.	Yarmouth, N. S.	
Bridgeport & Port Jefferson Steamboat Co.	1	391			Long Island Sound.	Port Jefferson, N. Y.	Bridgeport, Conn.	
Bull Steamship Co.	6	16,576			Atlantic Ocean and Gulf of Mexico.	Atlantic Ocean ports.	Atlantic Ocean ports.	
Casco Bay & Harpswell lines.	7	966			Casco Bay.	Portland, Me.	Casco Bay ports.	
Cleveland & Buffalo Transit Co.	4	13,040			Lake Erie.	Cleveland, Ohio.	Lake Erie ports.	
East Shore line.	2	132			Lake Michigan and Black Lake.	Lake Michigan ports.	Lake Michigan ports.	
Evansville & Bowling Green Packet Co.	4	415	• 6	11,080	Ohio, Green, and Barren rivers.	Evansville, Ind.	Bowling Green, Ky.	
Grand Trust Co. (American Transportation Co.) ¹⁵					Great lakes.	Oswego, N. Y., and lake ports.	Montreal, Canada.	
Great Lakes & St. Lawrence Transportation Co.	9	14,464			Puget Sound.	Seattle, Wash.	Skagway, Alaska.	
Humboldt Steamship Co.	1	1,075			Atlantic Ocean.	New York, N. Y., Boston, Mass.	British and other foreign ports.	
International Mercantile Marine Co.	124	1,115,861						

Louisville & Evansville Transportation Co.	2	883	.....	3	883	Ohio River.....	Louisville, Ky.....	Evansville, Ind.
Missouri Navigation Co.	19	45,966	14 5	14	50,780	Pacific Ocean.....	San Francisco, Cal.....	Hawale Islands.
Merchants & Miners Transportation Co.	24	61,248	.....	24	61,248	Chesapeake Bay and Atlantic Ocean.	Baltimore, Md.....	Boston, Mass., Jacksonville, Fla.
Merchants & Planters Steamboat Co.	14	629	13	17	929	Chattahoochee and Apalachicola Rivers.	Columbus, Ga.....	Apalachicola, Fla.
Merritt & Chapman Derrick & Wrecking Co.	7	3,044	16 5	13	4,049	Massachusetts Bay.....	(17)	(17)
Nantasket Beach Steamboat Co.	7	5,000	.....	7	5,000	Atlantic and Pacific oceans.	Boston, Mass.....	Plymouth and Nantasket Beach.
New York & Pacific S. S. Co., Ltd. (Merchants line).	11	55,280	.....	11	55,280	Potomac River and Chesapeake Bay.	New York, N. Y.....	West coast of South America
Norfolk & Washington Steamboat Co.	3	5,671	.....	3	5,671	Pacific Ocean and adjacent waters.	Washington, D. C.....	Portsmouth, Va.
Pacific Alaska Navigation Co.	6	11,998	.....	6	11,998	Atlantic Ocean and Gulf of Mexico.	San Francisco, Cal.....	Pacific ports.
Philadelphia-New Orleans Transportation Co.	13	6,000	.....	13	6,000	Atlantic Ocean and adjacent waters.	Philadelphia, Pa.....	Charleston, S. C., Tampa, Fla., and New Orleans, La.
Raymond Alley.	2	459	.....	2	459	Mississippi, Ohio, and Tennessee rivers.	Eastern Maine ports.....	New York, N. Y.
St. Louis & Tennessee River Packet Co.	5	1,297	.....	5	1,297	Delaware River and Delaware & Barham Canal.	St. Louis, Mo.....	River points.
Trenton Transportation Co.	4	1,027	.....	4	1,027		Philadelphia, Pa.....	Trenton, N. J.
Tyee Co.	11	181	19 2	13	1,498		(18)	(18)
Total.....	382	1,859,796	44	426	1,883,966			

¹ Owens but does not operate 5 steam vessels referred to in note 8 below.

² Owens but does not operate 2 steam vessels referred to in note 8 below.

³ Includes 7 steam vessels, gross tonnage 7,577 tons, chartered from owners not shown in this table.

⁴ Owens but does not operate 3 steam vessels referred to in note 7 below.

⁵ Includes 3 steam vessels, gross tonnage 10,182 tons, in United States Government transport service, and 2 steam vessels, gross tonnage 6,297 tons, chartered from Clyde Steamship Co., owner.

⁶ Includes 7 steam vessels, gross tonnage 20,250 tons, chartered from owner not shown in this table.

⁷ Includes 1 steam vessel, gross tonnage 6,399 tons, chartered from Mallory Steamship Co., owner.

⁸ Includes 5 steam vessels, gross tonnage 13,335 tons, chartered from Atlantic, Gulf & West Indies Steamship Lines, owner.

⁹ Barges.

¹⁰ Sailing vessels.

¹¹ Barges not registered. Gross tonnage approximate.

¹² Owens but does not operate 3 steam vessels referred to in note 13 below.

¹³ Includes 1 steam vessel, gross tonnage 7,099 tons, chartered from American-Hawalean Steamship Co., owner.

¹⁴ Includes 3 sailing vessels, gross tonnage 3,049 tons, and 2 barges, gross tonnage 1,765 tons.

¹⁵ Includes 4 steam vessels, gross tonnage 6,866 tons, not in operation on June 30, 1914.

¹⁶ Includes 1 steam vessel, gross tonnage 114 tons, not in operation on June 30, 1914.

¹⁷ "No commodities carried in any fixed direction."

¹⁸ Chartered from Girard Trust Co. (American Transportation Co.), owner.

¹⁹ Not in operation on June 30, 1914.

²⁰ Barges, not in operation on June 30, 1914.

²¹ See notes 19 and 20 above.

EXHIBIT 4, SECTION (A).

EXPLANATORY NOTE.

Section (a) of this exhibit contains the information given in answer to the interrogatories based upon the second paragraph of the resolution with the exception of that part which pertains to rates on commodities carried partly by water and partly by rail across the Isthmus of Panama or Tehuantepec. These latter routes were discontinued in 1914.

Rates upon commodities shown under the caption "wholly by water via Panama Canal" are the rates in effect at the end of October, 1914, charged for the transportation of freight between Atlantic and Pacific ports of the United States by American-Hawaiian Steamship Company and Atlantic and Pacific Steamship Company.

The approximate distances such freight is carried by vessels of these two companies vary from 4,880 miles to 6,175 miles, a blanket rate being charged upon each commodity from coast to coast.

Water rates used for purposes of comparison are those in effect at the end of October, 1914, upon commodities carried by vessels under British registry operated by the New York and Pacific Steamship Company, Limited. The vessels of this company ply between Atlantic ports of the United States and Valparaiso, Chile, Callao, Peru, and other ports on the west coast of South America, passing through the Panama Canal and covering similar distances as the water routes between Atlantic and Pacific ports of the United States, above referred to.

This exhibit also shows rates in effect on commodities carried wholly by rail between Atlantic and Pacific ports of the United States.

RELATIONS BETWEEN CARRIERS BY RAIL AND BY WATER.

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Prevailing rates upon principal commodities in effect on October 31, 1914.

[Prevailing rates per 100 pounds in carload lots.]

Commodities.	East or west bound.	Carried between Atlantic and Pacific ports of the United States. ¹		Carried by water by vessels not under United States registry from New York to—	
		Wholly by water via Panama Canal.	Wholly by rail.	Callao, Peru (6,100 miles via Valparaíso).	Valparaíso, Chile (4,630 miles).
Products of agriculture:					
Grain—Barley.....	East.....	\$0.30	\$0.90		
Flour.....	do.....	.30	.70		
Other mill products—					
Mill feed.....	do.....	.40	1.52		
Meal.....	do.....	.40	.90		
Hay.....	do.....	.50	1.20		
Tobacco—Cigars.....	West.....	1.00	3.00		
Fruit—					
Dried and evaporated.....	East.....	.40	1.10		
Canned.....	do.....	.30	.85		
Vegetables—Beans and peas.....	do.....	.35	.85		
Do.....	West.....	.50	.75		
Other products of agriculture—Hops.....	East.....	.80	1.75		
Products of animals:					
Poultry, game, and fish—Canned salmon.....	do.....	.30	.70		
Leather.....	West.....	1.25	1.25	\$0.63	\$0.57
Wool, in grease.....	East.....	.45	1.00		
Products of forests: Lumber—Shingles.....	do.....	.55	.85		
Manufactures:					
Oil—Lubricating.....	West.....	.50	1.90	1.46	1.44
Naval stores—					
Paint.....	do.....	.50	1.20	.37	.33
Rosin.....	do.....	.45	.75	.31	.31
Hardware.....	do.....	.85	1.10	.54	.50
Nails.....	do.....	.25	1.25		
Rope and cable.....	do.....	.25	.90	.31	.31
Tinware.....	do.....	.50	1.10	.37	.33
Iron and steel.....	do.....	.90	1.20	.37	.33
Rails.....	do.....	.30	.80	.31	.31
Structural.....	do.....	.25	.80	.37	.33
Bar and angle.....	do.....	.25	.80	.54	.50
Castings—					
Iron pipe.....	do.....	.35	.65	.37	.33
Heaters, stoves, etc.....	do.....	.60	1.50	.37	.33
Machinery, n. o. s.....	do.....	.95	1.92	.54	.50
Bar and sheet metal—					
Babbitt metal.....	do.....	.60	1.90		
Tin plate.....	do.....	.25	.74		
Sheet iron.....	do.....	.30	1.00		
Copper sheets.....	do.....	.75	1.50		
Cement.....	do.....	.30	1.20		
Agricultural implements.....	do.....	.75	1.25	.33	.33
Wagons, carriages, etc.—					
Bicycles.....	do.....	1.50	2.50		
Baby carriages.....	do.....	1.25	2.20	.54	.50
Gin, whisky, and bitters.....	do.....	.60	3.20		
Household goods and furniture.....	do.....	1.25	1.65	.54	.50
Household goods—					
Carpets and rugs.....	do.....	1.00	1.85	.54	.50
Linoleum, oilcloth.....	do.....	.60	1.10	.54	.50
Other manufactures—					
Drugs, etc.....	do.....	.75	1.50	.63	.57
Perfumery.....	do.....	2.00	3.70	.37	.33
Electrical goods.....	do.....	1.00	1.60	.54	.50
Glassware.....	do.....	.75	1.50	.33	.33
Boots and shoes.....	do.....	1.25	2.75	.63	.57

¹ Between New York, N. Y., and East San Pedro, Cal., San Francisco, Cal., Portland, Oreg., Seattle, Wash., and Tacoma, Wash., mileage by water from 4,890 to 6,175 miles, and by rail from 3,151 to 5,236 miles.

² Based on tariff rate per cubic foot, this measure being considered equivalent to 60 pounds.

Prevailing rates upon principal commodities in effect on October 31, 1914—Continued.

Commodities.	East or west bound.	Carried between Atlantic and Pacific ports of the United States.		Carried by water by vessels not under United States registry from New York to—	
		Wholly by water via Panama Canal.	Wholly by rail.	Callao, Peru (6,100 miles via Valparaíso).	Valparaíso, Chile (4,630 miles).
Merchandise and miscellaneous:					
Groceries—					
Tea.....	East....	\$0.40	\$1.00	.....	.....
Coffee.....	West....	.45	1.10	.....	.....
Starch.....	do....	.55	1.00	.....	.....
Soap.....	do....	.40	.80	\$0.54	\$0.80
Cereal.....	do....	.50	.90
Dry goods, n. o. s.....	do....	1.50	1.50	.65	.87
Cotton piece goods.....	do....	.60	1.10

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EXHIBIT 4, SECTION (B).

EXPLANATORY NOTE.

Section (b) of this exhibit contains the information given in answer to the interrogatories based upon the third and fourth paragraphs of the resolution. It shows a comparison of the water rates on freight carried by vessels in the coastwise trade of the United States with the water rates on similar freight for similar distances carried by vessels in the foreign trade of the United States (1) under United States registry and (2) under foreign registry. The rates shown under the caption "in the coastwise trade of the United States" are rates in effect at the end of October, 1914, on commodities carried by vessels operated by the following companies:

In the Atlantic coast and the Gulf coast trades.—Clyde Steamship Company, Eastern Steamship Company, Mallory Steamship Company, Merchants and Miners Transportation Company, New York and Porto Rico Steamship Company, Ocean Steamship Company of Savannah.

In the Pacific coast trade.—Pacific Coast Steamship Company, Pacific Mail Steamship Company, Pacific Navigation Company.

The rates shown under the caption "in the foreign trade of the United States" are those in effect at the end of October, 1914, on commodities carried by vessels under United States registry operated by the following companies:

In the Atlantic coast trade.—Eastern Steamship Company (to Canadian ports), Atlantic and Caribbean Steam Navigation Company (to South American ports).

In the Pacific coast trade.—San Juan Navigation Company, Pacific Coast Steamship Company (to Canadian ports), Pacific Mail Steamship Company (to Mexican ports).

The rates in effect at the end of October, 1914, on freight carried by vessels under foreign registry are reported by the following companies:

In the Atlantic coast trade.—Boston and Yarmouth Steamship Company (to Canadian ports).

In the Gulf coast trade.—Atlantic and Mexican Gulf Steamship Company (to Mexican ports), Wolvin line (to Mexican ports).

The Wolvin line operates steamers under Norwegian registry, while those operated by the Boston and Yarmouth and the Atlantic and Mexican Gulf companies are under British registry.

Prevailing rates upon principal commodities

Commodities.	In the coastwise trade of the United States.			
	From—	To—	Miles.	Rate and rate base.
Products of agriculture:				
Grain.....	Baltimore, Md.....	Newport News, Va....	187	30.07 cwt..
Do.....	Boston, Mass.....	New York, N. Y.....	237	.07 cwt..
Grain—				
Oats.....	Baltimore, Md.....	Savannah, Ga.....	629	.10 cwt..
Do.....	Seattle, Wash.....	San Diego, Cal.....	1,286	4.15 ton..
Do.....	New York, N. Y.....	Galveston, Tex.....	2,000	.15 cwt..
Wheat.....	Seattle, Wash.....	San Diego, Cal.....	1,286	2.75 ton..
Rye.....	Baltimore, Md.....	Savannah, Ga.....	629	.10 cwt..
Do.....	Seattle, Wash.....	San Diego, Cal.....	1,286	2.75 ton..
Barley.....	do.....	do.....	1,286	4.15 ton..
Rice.....	Mobile, Ala.....	San Juan, P. R.....	2,657	.25 cwt..
Flour.....	Baltimore, Md.....	Newport News, Va....	187	.675 cwt..
Do.....	Boston, Mass.....	New York, N. Y.....	237	.075 cwt..
Do.....	San Francisco, Cal....	San Diego, Cal.....	486	.15 cwt..
Do.....	Baltimore, Md.....	Savannah, Ga.....	629	.10 cwt..
Do.....	Philadelphia, Pa.....	do.....	700	.10 cwt..
Do.....	Savannah, Ga.....	New York, N. Y.....	710	.10 cwt..
Do.....	Galveston, Tex.....	Key West, Fla.....	757	.15 cwt..
Do.....	Seattle, Wash.....	San Diego, Cal.....	1,286	4.40 ton..
Do.....	San Francisco, Cal....	Honolulu, Hawaii....	2,100	2.50 ton..
Do.....	Mobile, Ala.....	San Juan, P. R.....	2,657	.175 cwt..
Other mill products—				
Mill feed.....	Baltimore, Md.....	Newport News, Va....	187	.07 cwt..
Meal.....	Boston, Mass.....	New York, N. Y.....	237	.085 cwt..
Do.....	Mobile, Ala.....	San Juan, P. R.....	2,657	.175 cwt..
Bran, shorts, middlings...	Seattle, Wash.....	San Diego, Cal.....	1,286	4.90 ton..
Hay.....	Augusta, Me.....	Boston, Mass.....	156	.12 cwt..
Do.....	Mobile, Ala.....	Key West, Fla.....	575	.15 cwt..
Tobacco—Cigars.....	Key West, Fla.....	Galveston, Tex.....	757	1.25 cwt..
Fruit—				
Fresh.....	Baltimore, Md.....	Newport News, Va....	187	.17 cwt..
Citrus.....	Key West, Fla.....	Mobile, Ala.....	575	.60 bbl..
Apples.....	Boston, Mass.....	Norfolk, Va.....	532	.34 bbl..
Fresh, n. o. s.....	San Diego, Cal.....	Seattle, Wash.....	1,286	5.75 ton..
Fruit and vegetables, canned..	Augusta, Me.....	Boston, Mass.....	156	.12 cwt..
Do.....	Key West, Fla.....	Mobile, Ala.....	575	.30 cwt..
Do.....	San Francisco, Cal....	Seattle, Wash.....	910	2.00 ton..
Do.....	do.....	Tacoma, Wash.....	950	2.00 ton..
Do.....	Seattle, Wash.....	San Diego, Cal.....	1,286	5.00 ton..

¹ Based on tariff rate per bag of 196 pounds. Includes 5 per cent primage.

carried by water in effect on Oct. 31, 1914.

In the foreign trade of the United States.							
Under United States registry.				Under foreign registry.			
From—	To—	Miles.	Rate and rate base.	From—	To—	Miles.	Rate and rate base.
Seattle, Wash.	Vancouver, B. C.	160	\$0.10 cwt.				
Boston, Mass.	St. John, N. B.	350	.10 cwt.	Boston, Mass.	Yarmouth, N. S.	240	\$0.08 cwt.
				Mobile, Ala.	Progreso, Mexico.	572	.25 cwt.
Vancouver, B. C.	San Diego, Cal.	1,300	5.75 ton.				
New York, N. Y.	Puerto Cabello, Venezuela.	2,076	1.28 cwt.				
Vancouver, B. C.	San Diego, Cal.	1,300	5.25 ton.				
				Mobile, Ala.	Progreso, Mexico.	572	.15 cwt.
Vancouver, B. C.	San Diego, Cal.	1,300	5.25 ton.				
do.	do.	1,300	5.75 ton.				
New York, N. Y.	Maracaibo, Venezuela.	2,225	1.30 cwt.				
Seattle, Wash.	Vancouver, B. C.	160	.10 cwt.				
Boston, Mass.	St. John, N. B.	350	.10 cwt.	Texas City, Tex.	Tampico, Mexico.	460	.25 cwt.
				do.	Vera Cruz, Mexico.	615	.25 cwt.
				Mobile, Ala.	Progreso, Mexico.	572	.30 cwt.
				New Orleans, La.	Tampico, Mexico.	714	.25 cwt.
				do.	Vera Cruz, Mexico.	794	.25 cwt.
Vancouver, B. C.	San Diego, Cal.	1,300	6.00 ton.				
San Francisco, Cal.	Salina Cruz, Mexico.	2,189	7.00 ton.				
New York, N. Y.	Maracaibo, Venezuela.	2,225	1.31 cwt.				
Seattle, Wash.	Vancouver, B. C.	160	.10 cwt.				
Boston, Mass.	St. John, N. B.	350	.10 cwt.				
New York, N. Y.	Maracaibo, Venezuela.	2,225	1.31 cwt.				
Vancouver, B. C.	San Diego, Cal.	1,300	6.50 ton.				
Seattle, Wash.	Vancouver, B. C.	160	.25 cwt.				
				Mobile, Ala.	Progreso, Mexico.	572	.30 cwt.
				Vera Cruz, Mexico.	New Orleans, La.	794	1.00 cwt.
Seattle, Wash.	Vancouver, B. C.	160	.25 cwt.				
				Mobile, Ala.	Progreso, Mexico.	572	.75 bbl.
				do.	do.	572	.75 bbl.
San Diego, Cal.	Vancouver, B. C.	1,300	7.25 ton.				
Seattle, Wash.	do.	160	.125 cwt.				
				Mobile, Ala.	Progreso, Mexico.	572	.40 cwt.
San Francisco, Cal.	Victoria, B. C.	850	2.25 ton.				
do.	Vancouver, B. C.	950	2.75 ton.				
Vancouver, B. C.	San Diego, Cal.	1,300	6.50 ton.				

* Includes 5 per cent primage.

Prevailing rates upon principal commodities carried

Commodities.	In the coastwise trade of the United States.			
	From—	To—	Miles.	Rate and rate base.
Products of agriculture—Contd.				
Vegetables—				
Beans and peas, dried.....	San Francisco, Cal....	Seattle, Wash.....	910	\$3.00 ton..
Do.....	do.....	Tacoma, Wash.....	950	2.00 ton..
Do.....	San Diego, Cal.....	Seattle, Wash.....	1,286	4.50 ton..
Do.....	San Francisco, Cal....	Honolulu, Hawaii....	2,100	2.50 ton..
Potatoes.....				
Do.....	Augusta, Me.....	Boston, Mass.....	156	.10 cwt..
Do.....	Savannah, Ga.....	Baltimore, Md.....	629	.55 bbl..
Do.....	Seattle, Wash.....	San Diego, Cal.....	1,286	5.75 ton..
Do.....	San Francisco, Cal....	Honolulu, Hawaii....	2,100	2.50 ton..
Do.....	Boston, Mass.....	New York, N. Y.....	337	.125 cwt..
Products of animals:				
Meats—				
Fresh.....	do.....	Bangor, Me.....	209	.15 cwt..
Salted.....	Baltimore, Md.....	Savannah, Ga.....	629	.15 cwt..
Packing-house products.....				
Do.....	Galveston, Tex.....	Tampa, Fla.....	496	.20 cwt..
Do.....	Boston, Mass.....	Norfolk, Va.....	532	.12 cwt..
Do.....	Baltimore, Md.....	Savannah, Ga.....	629	.15 cwt..
Do.....	Savannah, Ga.....	New York, N. Y.....	710	.15 cwt..
Packing-house products—				
Beef, pork, pickled....	Boston, Mass.....	Bangor, Me.....	209	.25 bbl..
Lard.....	Seattle, Wash.....	San Diego, Cal.....	1,286	5.00 ton..
Fish—				
Canned.....	Baltimore, Md.....	Newport News, Va....	187	.10 cwt..
Do.....	Seattle, Wash.....	San Diego, Cal.....	1,286	5.00 ton..
Smoked, salted.....	Boston, Mass.....	New York, N. Y.....	337	.115 cwt..
Frozen.....	do.....	do.....	337	.20 cwt..
Pickled.....	do.....	do.....	337	.08 cwt..
Oysters, in the shell....	Norfolk, Va.....	Boston, Mass.....	532	.65 bbl..
Hides and pelts.....				
Do.....	Seattle, Wash.....	San Francisco, Cal....	910	12.00 ton..
Do.....	Tacoma, Wash.....	do.....	950	12.00 ton..
Skins.....	Galveston, Tex.....	New York, N. Y.....	2,000	.22 cwt..
Other products of animals—				
Butter.....	San Francisco, Cal....	Tacoma, Wash.....	950	6.00 ton..
Eggs.....	Augusta, Me.....	Boston, Mass.....	156	.40 cwt..
Do.....	Boston, Mass.....	Bangor, Me.....	209	.40 cwt..
Products of mines:				
Coke in sacks.....				
Do.....	Seattle, Wash.....	San Francisco, Cal....	910	4.00 ton..
Do.....	Tacoma, Wash.....	do.....	950	4.00 ton..
Stone, granite (rough)....	Boston, Mass.....	New York, N. Y.....	337	.08 cwt..
Sand.....	Tacoma, Wash.....	San Francisco, Cal....	950	1.50 ton..

by water in effect on Oct. 31, 1914—Continued.

In the foreign trade of the United States.							
Under United States registry.				Under foreign registry.			
From—	To—	Miles.	Rate and rate base.	From—	To—	Miles.	Rate and rate base.
San Francisco, Cal.	Victoria, B. C.	350	\$3.75 ton.				
do.	Vancouver, B. C.	950	3.75 ton.				
San Diego, Cal.	do.	1,300	6.00 ton.				
San Francisco, Cal.	Salina Cruz, Mexico.	2,189	7.00 ton.				
Seattle, Wash.	Vancouver, B. C.	160	.15 cwt.				
San Diego, Cal.	Vancouver, B. C.	1,300	7.25 ton.	Mobile, Ala.	Progreso, Mexico.	572	\$0.75 bbl.
San Francisco, Cal.	Salina Cruz, Mexico.	2,189	9.00 ton.				
				Boston, Mass.	Yarmouth, N. S.	240	.15 cwt.
Seattle, Wash.	Vancouver, B. C.	160	.20 cwt.				
				Mobile, Ala.	Progreso, Mexico.	572	.35 cwt.
				Texas City, Tex.	Tampico, Mexico.	460	.30 cwt.
				Mobile, Ala.	Progreso, Mexico.	572	.25 cwt.
				Texas City, Tex.	Vera Cruz, Mexico.	615	.30 cwt.
				New Orleans, La.	Tampico, Mexico.	714	.30 cwt.
				Boston, Mass.	Yarmouth, N. S.	240	.25 bbl.
Vancouver, B. C.	San Diego, Cal.	1,300	6.50 ton.				
Seattle, Wash.	Vancouver, B. C.	160	.125 cwt.				
Vancouver, B. C.	San Diego, Cal.	1,300	6.50 ton.				
Boston, Mass.	St. John, N. B.	350	.15 cwt.	Boston, Mass.	Yarmouth, N. S.	240	.12 cwt.
do.	do.	350	.30 cwt.				
do.	do.	350	.125 cwt.	Boston, Mass.	Yarmouth, N. S.	240	.15 cwt.
				Mobile, Ala.	Progreso, Mexico.	572	.75 bbl.
Victoria, B. C.	San Francisco, Cal.	850	15.00 ton.				
Vancouver, B. C.	do.	950	16.00 ton.				
Puerto Cabello, Venezuela.	New York, N. Y.	2,078	1.50 cwt.				
San Francisco, Cal.	Vancouver, B. C.	950	6.00 ton.				
Seattle, Wash.	do.	160	.35 cwt.	Boston, Mass.	Yarmouth, N. S.	240	.50 cwt.
Victoria, B. C.	San Francisco, Cal.	850	6.00 ton.				
Vancouver, B. C.	do.	950	7.00 ton.				
Boston, Mass.	St. John, N. B.	350	.15 cwt.				
Vancouver, B. C.	San Francisco, Cal.	950	2.50 ton.				

¹ Based on tariff rate per pound. Includes 5 per cent primage.

standard refrigeration charge was assessed. The Southern Pacific and the San Pedro, Los Angeles & Salt Lake provided that "no charge will be made for use of refrigerator cars which are not iced," and the Atchison, Topeka & Santa Fe had a rule that "rates named in this tariff (naming rates for refrigeration of carloads of perishable freight, specifically including citrus fruit) apply on all freight loaded in refrigerator cars." On a number of precooled cars shipped by complainant prior to the publication of the \$30 charge per car the standard refrigeration charges of defendants were collected. Complainant contends that such charges were collected without tariff authority.

Complainant has classified the shipments involved in this proceeding as follows:

1. According to the tariff in effect when the shipments moved—
(a) shipments made subsequent to the publication of the precooling tariffs in July, 1909, upon which there was assessed and collected a charge of \$30 per car of 32,000 pounds or less with an additional charge of 9½ cents per 100 pounds in excess of 32,000 pounds; and
(b) shipments made prior to the publication of those tariffs, upon which standard refrigeration charges were assessed and collected.

2. According to the time the detailed statements of the shipments were first filed—(a) shipments, detailed lists of which were filed during the hearing in the original case in March, 1910; (b) shipments, detailed lists of which were filed on June 7, 1911, with the filing of the first intervening and supplemental petition of complainant herein; (c) shipments, detailed lists of which were filed on July 7, 1915, with the second intervening and supplemental petition of complainant herein.

3. According to the loading of the cars—(a) shipments loaded seven tiers wide and two tiers high; (b) shipments not so loaded.

The complaining corporation was organized for the purpose of conducting its business under a cooperative plan for the benefit of its members and not for profit. Its members are producers and growers. Complainant represents them in getting their citrus products to the various markets of the United States and Canada. In its representative capacity it acts as the shipper for its members and was the consignor and consignee of all the shipments on which reparation is asked. Defendants knew that complainant was acting as consignor and consignee. Complainant paid the freight charges for the transportation of the shipments here involved; and, as the shipper, acted in its representative capacity for the real owners of the fruit. Complainant states it will give to each of the three defendants, in the event the Commission shall enter an award of reparation to it as the shipper of the fruit, a bond indemnifying de-

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Prevailing rates upon principal commodities carried

Commodities.	In the coastwise trade of the United States.			
	From—	To—	Miles.	Rate and rate base.
Products of mines—Continued.				
Other products of mines—				
Salt.....	Boston, Mass.....	New York, N. Y.....	337	90. 10cwt..
Do.....	Tacoma, Wash.....	San Francisco, Cal.....	960	1. 50 ton..
Asphaltum.....	San Francisco, Cal.....	Tacoma, Wash.....	960	1. 50 ton..
Do.....	Seattle, Wash.....	San Diego, Cal.....	1,286	2. 25 ton..
Lime rock.....	San Francisco, Cal.....	Seattle, Wash.....	910	2. 00 ton..
Do.....	do.....	Tacoma, Wash.....	960	2. 00 ton..
Products of forests:				
Lumber.....	Portland, Oreg.....	Florence, Oreg.....	268	7. 00 M ft.
Do.....	Savannah, Ga.....	Baltimore, Md.....	629	5. 50 M ft.
Do.....	Tacoma, Wash.....	San Francisco, Cal.....	960	8. 00 M ft.
Do.....	San Francisco, Cal.....	Honolulu, Hawaii.....	2,100	8. 00 M ft.
Do.....	Mobile, Ala.....	San Juan, P. R.....	2,657	8. 50 M ft.
Other products of forests—				
Laths.....	Norfolk, Va.....	Boston, Mass.....	532	. 19cwt..
Do.....	San Francisco, Cal.....	Tacoma, Wash.....	960	. 90 M....
Shingles.....	do.....	do.....	960	. 50 M....
Box shooks.....	Baltimore, Md.....	Savannah, Ga.....	629	. 10cwt..
Do.....	Savannah, Ga.....	New York, N. Y.....	710	. 10cwt..
Do.....	Galveston, Tex.....	Key West, Fla.....	757	. 25cwt..
Do.....	San Francisco, Cal.....	Seattle, Wash.....	910	2. 25cwt..
Do.....	do.....	Tacoma, Wash.....	960	2. 25cwt..
Manufactures:				
Oils.....	Baltimore, Md.....	Newport News, Va.....	187	. 10cwt..
Oils—				
Petroleum.....	San Francisco, Cal.....	Tacoma, Wash.....	960	2. 25 ton..
Lubricating.....	Boston, Mass.....	Augusta, Me.....	156	. 10cwt..
Do.....	Baltimore, Md.....	Savannah, Ga.....	629	. 15cwt..
Do.....	New York, N. Y.....	do.....	710	. 19cwt..
Do.....	Brunswick, Ga.....	New York, N. Y.....	757	. 19cwt..
Do.....	Seattle, Wash.....	San Diego, Cal.....	1,286	4. 25 ton..
Coal oil.....	San Francisco, Cal.....	Honolulu, Hawaii.....	2,100	3. 50 ton..
Cottonseed oil.....	Boston, Mass.....	Norfolk, Va.....	532	. 15cwt..
Do.....	Savannah, Ga.....	Baltimore, Md.....	629	. 10cwt..
Do.....	do.....	New York, N. Y.....	710	. 125cwt..
Do.....	Brunswick, Ga.....	do.....	757	. 125cwt..
Olive oil.....	San Diego, Cal.....	Seattle, Wash.....	1,286	11. 50 ton..
Grease.....	Boston, Mass.....	New York, N. Y.....	337	. 11cwt..
Do.....	do.....	Norfolk, Va.....	532	. 13cwt..

Based on tariff rate per cubic foot, this measure being considered equivalent to 50 pounds.

by water in effect on Oct. 31, 1914—Continued.

In the foreign trade of the United States.							
Under United States registry.				Under foreign registry.			
From—	To—	Miles.	Rate and rate base.	From—	To—	Miles.	Rate and rate base.
Boston, Mass.	St. John, N. B.	350	\$0.125 cwt.				
Vancouver, B. C.	San Francisco, Cal.	250	2.25 ton.				
San Francisco, Cal.	Vancouver, B. C.	250	2.50 ton.				
Vancouver, B. C.	San Diego, Cal.	1,300	3.75 ton.				
San Francisco, Cal.	Victoria, B. C.	850	2.00 ton.				
do.	Vancouver, B. C.	250	2.50 ton.				
				Boston, Mass.	Yarmouth, N. S.	200	26.00 M ft.
				Mobile, Ala.	Progreso, Mexico.	572	2.00 M ft.
Vancouver, B. C.	San Francisco, Cal.	250	2.50 M ft.				
San Francisco, Cal.	Salina Cruz, Mexico.	2,199	12.50 M ft.				
New York, N. Y.	Maracaibo, Venezuela.	2,225	2.00 M ft.				
				Mobile, Ala.	Progreso, Mexico.	572	.30 cwt.
San Francisco, Cal.	Vancouver, B. C.	250	1.50 M.				
do.	do.	250	.75 M.				
				Texas City, Tex.	Vera Cruz, Mexico.	615	1.14 cwt.
				New Orleans, La.	Tampico, Mexico.	714	1.14 cwt.
				do.	Vera Cruz, Mexico.	704	1.14 cwt.
San Francisco, Cal.	Victoria, B. C.	850	2.25 cwt.				
do.	Vancouver, B. C.	250	2.75 cwt.				
Tacoma, Wash.	do.	180	.15 cwt.				
San Francisco, Cal.	do.	250	2.75 ton.				
Seattle, Wash.	do.	180	.15 cwt.				
				Texas City, Tex.	Vera Cruz, Mexico.	615	.25 cwt.
				New Orleans, La.	Tampico, Mexico.	714	.25 cwt.
				do.	Vera Cruz, Mexico.	704	.25 cwt.
Vancouver, B. C.	San Diego, Cal.	1,300	5.75 ton.				
San Francisco, Cal.	Salina Cruz, Mexico.	2,199	5.50 ton.				
				Mobile, Ala.	Progreso, Mexico.	572	.25 cwt.
				Texas City, Tex.	Vera Cruz, Mexico.	615	.25 cwt.
				New Orleans, La.	Tampico, Mexico.	714	.25 cwt.
				do.	Vera Cruz, Mexico.	704	.25 cwt.
San Diego, Cal.	Vancouver, B. C.	1,300	12.00 ton.				
Boston, Mass.	St. John, N. B.	350	.10 cwt.				
				Mobile, Ala.	Progreso, Mexico.	572	.25 cwt.

* Based on tariff rate per 40 cubic feet, this measure being considered equivalent to 1 ton.

Prevailing rates upon principal commodities carried

Commodities.	In the coastwise trade of the United States.			
	From—	To—	Miles.	Rate and rate base.
Manufactures—Continued.				
Sugar.....	Boston, Mass.....	Bangor, Me.....	209	\$0.11 cwt..
Do.....	Baltimore, Md.....	Savannah, Ga.....	639	.106 cwt..
Do.....	New York, N. Y.....	Jacksonville, Fla.....	833	.125 cwt..
Do.....	San Francisco, Cal....	Seattle, Wash.....	910	3.00 ton..
Do.....	do.....	Tacoma, Wash.....	960	3.00 ton..
Do.....	San Diego, Cal.....	Seattle, Wash.....	1,286	4.50 ton..
Naval stores—				
Pitch.....	Boston, Mass.....	Bangor, Me.....	209	.15 cwt..
Rope.....	Baltimore, Md.....	Newport News, Va....	187	.17 cwt..
Wire rope.....	San Francisco, Cal....	Tacoma, Wash.....	960	2.50 ton..
Resin.....	Boston, Mass.....	New York, N. Y.....	337	.09 cwt..
Tar.....	do.....	do.....	337	.09 cwt..
Turpentine.....	San Francisco, Cal....	Tacoma, Wash.....	960	2.50 ton..
Pig iron.....	do.....	Seattle, Wash.....	910	2.25 ton..
Do.....	do.....	Tacoma, Wash.....	960	2.25 ton..
Iron and steel articles.....	Boston, Mass.....	Norfolk, Va.....	583	.20 cwt..
Iron and steel articles—				
Barb wire.....	New York, N. Y.....	Galveston, Tex.....	2,000	.15 cwt..
Wire netting.....	San Francisco, Cal....	Seattle, Wash.....	910	5.00 ton..
Do.....	do.....	Tacoma, Wash.....	960	5.00 ton..
Tubes, boilers.....	Boston, Mass.....	New York, N. Y.....	337	.12 cwt..
Car wheels.....	Seattle, Wash.....	San Diego, Cal.....	1,286	3.50 ton..
Nuts, bolts, etc.....	do.....	do.....	1,286	4.50 ton..
Radiators.....	do.....	do.....	1,286	5.50 ton..
Track material.....	do.....	do.....	1,286	6.00 ton..
Bar and sheet metal—				
Iron bars.....	San Francisco, Cal....	Seattle, Wash.....	910	3.00 ton..
Do.....	do.....	Tacoma, Wash.....	960	3.00 ton..
Do.....	San Diego, Cal.....	Seattle, Wash.....	1,286	5.00 ton..
Tin plate.....	San Francisco, Cal....	do.....	910	2.50 ton..
Do.....	do.....	Tacoma, Wash.....	960	2.50 ton..
Cement.....	Boston, Mass.....	Augusta, Me.....	156	.125 cwt..
Do.....	do.....	Bangor, Me.....	209	.125 cwt..
Do.....	do.....	New York, N. Y.....	337	.06 cwt..
Do.....	San Francisco, Cal....	Tacoma, Wash.....	960	1.50 ton..
Do.....	New York, N. Y.....	Galveston, Tex.....	2,000	.115 cwt..
Do.....	San Francisco, Cal....	Honolulu, Hawaii....	2,100	2.75 ton..
Brick.....	do.....	Tacoma, Wash.....	960	2.75 ton..
Do.....	Seattle, Wash.....	San Diego, Cal.....	1,286	4.00 ton..
Plaster.....	San Francisco, Cal....	Tacoma, Wash.....	960	1.50 ton..

¹ Includes 5 per cent primage.

by water in effect on Oct. 31, 1914—Continued.

In the foreign trade of the United States.							
Under United States registry.				Under foreign registry.			
From—	To—	Miles.	Rate and rate base.	From—	To—	Miles.	Rate and rate base.
				Boston, Mass..	Yarmouth, N. S.	240	\$0.125 cwt.
				Texas City, Tex.	Vera Cruz, Mexico.	615	.20 cwt.
				New Orleans, La.	do.	794	.20 cwt.
San Francisco, Cal.	Victoria, B. C.	850	\$3.00 ton.				
do.	Vancouver, B. C.	950	3.50 ton.				
San Diego, Cal.	do.	1,300	6.00 ton.				
				Boston, Mass..	Yarmouth, N. S.	240	.15 cwt.
Tacoma, Wash.	Vancouver, B. C.	180	.15 cwt.				
San Francisco, Cal.	do.	950	4.00 ton.				
				Boston, Mass..	Yarmouth, N. S.	240	.15 cwt.
San Francisco, Cal.	Vancouver, B. C.	950	4.00 ton.	do.	do.	240	.15 cwt.
do.	Victoria, B. C.	850	3.00 ton.				
do.	Vancouver, B. C.	950	3.50 ton.				
				Mobile, Ala....	Progreso, Mexico.	572	.30 cwt.
New York, N. Y.	Puerto Cabello, Venezuela.	2,076	1.25 cwt.				
San Francisco, Cal.	Victoria, B. C.	850	8.00 ton.				
do.	Vancouver, B. C.	950	8.50 ton.				
				Boston, Mass..	Yarmouth, N. S.	240	.15 cwt.
Vancouver, B. C.	San Diego, Cal.	1,300	5.00 ton.				
do.	do.	1,300	6.00 ton.				
do.	do.	1,300	7.00 ton.				
do.	do.	1,300	7.50 ton.				
San Francisco, Cal.	Victoria, B. C.	850	3.25 ton.				
do.	Vancouver, B. C.	950	3.75 ton.				
San Diego, Cal.	do.	1,300	6.50 ton.				
San Francisco, Cal.	Victoria, B. C.	850	3.50 ton.				
do.	Vancouver, B. C.	950	4.00 ton.				
Seattle, Wash.	do.	180	.15 cwt.				
				Boston, Mass..	Yarmouth, N. S.	240	.10 cwt.
Boston, Mass..	St. John, N. B.	350	.10 cwt.				
San Francisco, Cal.	Vancouver, B. C.	950	2.00 ton.				
New York, N. Y.	Puerto Cabello, Venezuela.	2,076	1.175 cwt.				
San Francisco, Cal.	Salina Cruz, Mexico.	2,180	4.00 ton.				
do.	Vancouver, B. C.	950	3.50 ton.				
Vancouver, B. C.	San Diego, Cal.	1,300	5.50 ton.				
San Francisco, Cal.	Vancouver, B. C.	950	2.00 ton.				

² Based on tariff rate per 40 cubic feet, this measure being considered equivalent to 1 ton.

Prevailing rates upon principal commodities carried

Commodities.	In the coastwise trade of the United States.			
	From—	To—	Miles.	Rate and rate base.
Manufactures—Continued.				
Plaster.....	Seattle, Wash.....	San Diego, Cal.....	1,286	\$3.00 ton..
Agricultural implements.....	San Francisco, Cal.....	do.....	453	.20 cwt..
Vehicles, n. o. s.....	do.....	Seattle, Wash.....	910	2.25 ton..
Do.....	do.....	Tacoma, Wash.....	950	2.25 ton..
Vehicles—				
Automobiles.....	Boston, Mass.....	Bangor, Me.....	209	.75 cwt..
Do.....	do.....	New York, N. Y.....	337	.24 cwt..
Do.....	Seattle, Wash.....	San Diego, Cal.....	1,286	36.80 ton..
Beer.....	San Francisco, Cal.....	Seattle, Wash.....	910	3.50 ton..
Do.....	do.....	Tacoma, Wash.....	950	3.50 ton..
Brandy.....	San Diego, Cal.....	Seattle, Wash.....	1,286	3.50 ton..
Wine.....	San Francisco, Cal.....	Tacoma, Wash.....	950	2.00 ton..
Household goods.....	Baltimore, Md.....	Newport News, Va.....	187	.20 cwt..
Do.....	San Francisco, Cal.....	Seattle, Wash.....	910	3.00 ton..
Do.....	do.....	Tacoma, Wash.....	950	3.00 ton..
Other manufactures—				
Brooms.....	do.....	Seattle, Wash.....	910	2.25 ton..
Do.....	do.....	Tacoma, Wash.....	950	2.25 ton..
Boots and shoes.....	Baltimore, Md.....	Savannah, Ga.....	629	.87 cwt..
Crockery.....	San Francisco, Cal.....	Seattle, Wash.....	910	2.25 ton..
Do.....	do.....	Tacoma, Wash.....	950	2.25 ton..
Paraffin wax.....	New York, N. Y.....	Jacksonville, Fla.....	822	.20 cwt..
Soap.....	Boston, Mass.....	Norfolk, Va.....	532	.20 cwt..
Fertiliser.....	Baltimore, Md.....	Savannah, Ga.....	629	2.00 ton..
Do.....	San Francisco, Cal.....	Tacoma, Wash.....	950	3.50 ton..
Do.....	Seattle, Wash.....	San Diego, Cal.....	1,286	5.00 ton..
Do.....	San Francisco, Cal.....	Honolulu, Hawaii.....	2,100	3.50 ton..
Gunpowder.....	do.....	Seattle, Wash.....	910	5.00 ton..
Do.....	do.....	Tacoma, Wash.....	950	5.00 ton..
Building paper.....	do.....	do.....	950	2.50 ton..
Do.....	Seattle, Wash.....	San Diego, Cal.....	1,286	5.00 ton..
Wrapping paper.....	Boston, Mass.....	Norfolk, Va.....	532	.18 cwt..
Merchandise and miscellaneous:				
Merchandise—				
Acid.....	San Francisco, Cal.....	Tacoma, Wash.....	950	4.00 ton..
Ammonia.....	do.....	do.....	950	2.50 ton..
Bags, burlap.....	do.....	do.....	950	2.25 ton..
Do.....	Baltimore, Md.....	Newport News, Va.....	187	.10 cwt..
Baking powder.....	Boston, Mass.....	Norfolk, Va.....	532	.20 cwt..
Bones.....	San Francisco, Cal.....	Tacoma, Wash.....	950	4.00 ton..
Brooms.....	do.....	do.....	950	2.25 ton..

* Based on tariff rate per 100 pounds.

water in effect on Oct. 31, 1914—Continued.

In the foreign trade of the United States.							
Under United States registry.				Under foreign registry.			
From—	To—	Miles.	Rate and rate base.	From—	To—	Miles.	Rate and rate base.
Vancouver, B. C.	San Diego, Cal.	1,300	\$4.50 ton.				
San Francisco, Cal.	Victoria, B. C.	850	3.00 ton.	Texas City, Tex.	Tampico, Mexico.	460	\$0.40 cwt.
do.	Vancouver, B. C.	950	3.50 ton.				
				Boston, Mass.	Yarmouth, N. S.	240	.75 cwt.
Boston, Mass.	St. John, N. B.	350	1.00 cwt.				
Vancouver, B. C.	San Diego, Cal.	1,300	46.80 ton.				
San Francisco, Cal.	Victoria, B. C.	850	3.75 ton.				
do.	Vancouver, B. C.	950	4.25 ton.				
San Diego, Cal.	do.	1,300	5.00 ton.				
San Francisco, Cal.	do.	950	3.50 ton.				
do.	do.	160	.35 cwt.				
San Francisco, Cal.	Victoria, B. C.	850	3.50 ton.				
do.	Vancouver, B. C.	950	4.00 ton.				
do.	Victoria, B. C.	850	2.75 ton.				
do.	Vancouver, B. C.	950	3.00 ton.				
				Mobile, Ala.	Progreso, Mexico.	572	.60 cwt.
San Francisco, Cal.	Victoria, B. C.	850	3.00 ton.				
do.	Vancouver, B. C.	950	3.50 ton.				
				New Orleans, La.	Vera Cruz, Mexico.	704	.21 cwt.
				Mobile, Ala.	Progreso, Mexico.	572	.35 cwt.
				do.	do.	572	1.40 ton.
San Francisco, Cal.	Vancouver, B. C.	950	4.00 ton.				
Vancouver, B. C.	San Diego, Cal.	1,300	6.50 ton.				
San Francisco, Cal.	Salina Cruz, Mexico.	2,189	6.00 ton.				
do.	Victoria, B. C.	850	8.00 ton.				
do.	Vancouver, B. C.	950	10.00 ton.				
do.	do.	950	2.50 ton.				
Vancouver, B. C.	San Diego, Cal.	1,300	6.50 ton.				
				Mobile, Ala.	Progreso, Mexico.	572	.35 cwt.
San Francisco, Cal.	Vancouver, B. C.	950	5.00 ton.				
do.	do.	950	5.00 ton.				
do.	do.	950	3.50 ton.				
do.	do.	160	.15 cwt.				
				Mobile, Ala.	Progreso, Mexico.	572	.50 cwt.
San Francisco, Cal.	Vancouver, B. C.	950	5.00 ton.				
do.	do.	950	3.00 ton.				

Prevailing rates upon principal commodities carried

Commodities.	In the coastwise trade of the United States.			
	From—	To—	Miles.	Rate and rate base.
Merchandise and miscellaneous—Continued.				
Merchandise—Continued.				
Coffee.....	San Francisco, Cal....	Tacoma, Wash.....	980	\$3.00 ton..
Do.....	San Juan, P. R.....	Mobile, Ala.....	2,657	.25 cwt..
Dry goods, n. o. s.....	Baltimore, Md.....	Savannah, Ga.....	629	.57 cwt..
Do.....	New York, N. Y.....	Galveston, Tex.....	2,000	.55 cwt..
General.....	Baltimore, Md.....	Newport News, Va....	157	^a 3.20 ton..
Do.....	San Francisco, Cal....	Seattle, Wash.....	910	3.00 ton..
Do.....	.....do.....	Tacoma, Wash.....	980	3.00 ton..
Do.....do.....	Honolulu, Hawaii.....	2,100	3.80 ton..

^a Based on tariff rate per 160 pounds.^a Includes 5 per cent primeage.

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by water in effect on Oct. 31, 1914—Continued.

In the foreign trade of the United States.							
Under United States registry.				Under foreign registry.			
From—	To—	Miles.	Rate and rate base.	From—	To—	Miles.	Rate and rate base.
San Francisco, Cal.	Vancouver, B. C.	950	\$4.75 ton..	Vera Cruz, Mexico.	New Orleans, La.	794	\$4.00 ton.
Maracaibo, Venezuela.	New York, N. Y.	2,225	1.45 cwt..				
				Mobile, Ala...	Progreso, Mexico.	572	.75 cwt.
New York, N. Y.	Puerto Cabello, Venezuela.	2,076	1.40 cwt..				
Tacoma, Wash.	Vancouver, B. C.	160	3.00 ton..				
San Francisco, Cal.	Victoria, B. C.	850	4.00 ton..				
.....do.....	Vancouver, B. C.	950	4.50 ton..				
.....do.....	Salina Cruz, Mexico.	2,189	8.00 ton..				

¹ Based on tariff rate per cubic foot, this measure being considered equivalent to 50 pounds. Rate includes 5 per cent primage.

No. 3000.
ARLINGTON HEIGHTS FRUIT EXCHANGE ET AL.
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted February 12, 1916. Decided April 27, 1916.

Reparation denied on carload shipments of precooled and pre-iced oranges transported from California originating points to destinations in other states and in Canada.

Cassoday, Butler, Lamb & Foster for California Fruit Growers Exchange.

W. F. Herrin, C. W. Durbrow, and F. H. Wood for Southern Pacific Company.

A. S. Halsted for San Pedro, Los Angeles & Salt Lake Railroad Company.

Robert Dunlap, T. J. Norton, and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION ON SUPPLEMENTAL PETITION FOR
REPARATION.

DANIELS, Commissioner:

These proceedings involve claims for reparation made by the California Fruit Growers Exchange, one of the complainants in *Arlington Heights Fruit Exchange v. S. P. Co.*, 19 I. C. C., 148, upon carload shipments of precooled and pre-iced oranges transported from California originating points to destinations in other states and in Canada. They are an outgrowth of a series of decisions by the Commission in *Arlington Heights Fruit Exchange v. S. P. Co.*, *supra*; 20 I. C. C., 106; 22 I. C. C., 149; and *In the Matter of Certain Regulations and Practices with Regard to Precooling and Pre-icing*, 23 I. C. C., 267; by the Commerce Court, *Atchison, etc., Ry. Co. v. United States*, 204 Fed., 647; and by the Supreme Court of the United States, *Atchison, etc., Ry. Co. v. United States*, 232 U. S., 199.

It is unnecessary to detail step by step the various proceedings before the Commission, the Commerce Court, and the Supreme Court. Only such matters and things as are relevant to the claim for reparation will be considered in this report. Rates herein are stated in cents per 100 pounds.

In the original complaint filed November 27, 1909, complainant and all of its constituent members were named as parties complainant. The complaint put in issue the reasonableness of the then effective rate of \$1.15 on oranges; the lately increased lemon rate of \$1.15; the reasonableness of the then existing charges for standard refrigeration; and the lawfulness of the precooling charge of \$30 per car. After attacking the existing refrigeration and precooling charges as unreasonable, unjust, extortionate, excessive, and discriminatory, the complaint ended with a general prayer for relief, asking that the Commission "make such order for reparation and restitution by the defendants respectively to the complainants as shall be found just and proper." This is all that was alleged in the complaint with regard to reparation. In its first report, 19 I. C. C., 148, the Commission found that the rate on oranges from points in southern California to the east was not unreasonable, but held the \$1.15 rate on lemons unreasonable to the extent that it exceeded \$1 per 100 pounds. Prefacing the statement with a reference to the fact that the petition contained a prayer for reparation, the Commission said that it was its understanding that in consequence of certain injunction proceedings against the collection of the increased rate on lemons, the \$1 rate had been generally, if not uniformly, collected; but that if in any case the increased rate had been paid, reparation would be allowed in proper proceedings on the basis of the \$1 rate. Such proceedings were had, and reparation made. The Commission stated further that it was itself investigating the refrigeration and precooling of citrus fruit shipments, and all questions relating to those issues would be reserved for further consideration and future disposition.

In the second report, issued January 14, 1911, 20 I. C. C., 106, the Commission, although not finding the charges for refrigeration in transit from California points to the east unreasonable, found, at page 123—

that the present precooling charges of the defendants of \$30 per car are unjust and unreasonable, and that these charges should not exceed for the future \$7.50 per car; but the defendants may, as a condition of making this charge, require that precooled cars may be loaded seven tiers wide and two tiers high, and may provide by their tariffs a proper minimum to accomplish this result, the amount of which would depend upon the length of the car.

The effective date of the Commission's order requiring the establishment of the \$7.50 charge was extended from April 15, 1911, to June 15, 1911, on which date the \$7.50 charge became effective. It has been continuously maintained since.

On June 17, 1911, complainant filed an intervening and supplemental complaint against the Southern Pacific Company, the A. i-
39 I. C. C.

son, Topeka & Santa Fe Railway Company, and the San Pedro, Los Angeles & Salt Lake Railroad Company, three of the defendants in the original case. Attached to this complaint were detailed statements of all shipments originating in California upon the lines of these defendants on which complainant claimed reparation. They included precooled and pre-iced shipments on which standard refrigeration charges were paid and precooled and pre-iced shipments on which the \$30 charge was exacted after its publication. On March 25 and 29, 1910, at the original hearing begun March 23, certain statements were filed. These covered shipments from Pomona and East Highlands, Cal., which were shipped therefrom between March 30, 1908, and August 20, 1909. All these shipments, the statements of which were filed at the first hearing, were included with others in the statements attached to the first intervening and supplemental petition.

On July 7, 1915, complainant filed its second intervening and supplemental petition to which were attached statements of all shipments of precooled and pre-iced oranges moving between March 1, 1911, and June 15, 1911, the effective date of our order. These shipments originated at Pomona, East Highlands, Upland, and Pasadena, Cal.

On July 5, 1909, prior to the filing of the original complaint, the Atchison, Topeka & Santa Fe and the Southern Pacific, and on July 19, 1909, the San Pedro, Los Angeles & Salt Lake, railroads established for the first time the following provision:

On all carloads of citrus fruit precooled and pre-iced, or pre-iced by shipper offered for shipment with instruction, "do not re-ice in transit," a charge of \$30 per car of 32,000 pounds or less will be made, excess weight to be charged for at 9½ cents per 100 pounds. On all cars handled under this rule shipper will sign the following release, which must in all cases appear on shipping ticket and bill of lading and be copied on the waybill of agent: "The giving and acceptance of these special instructions from the shipper releases the initial carrier and its connections from all liability for damage caused by nonicing in transit or at destination."

Complainant delivered all the shipments on which reparation is asked to defendants with instructions not to re-ice en route and signed the above-quoted release, which was noted on the shipping tickets, bills of lading, and waybills.

Before the above tariff went into effect numerous shipments had been made under the precooling method as a substitute for refrigeration. The tariffs of defendants contained no specific provision for precooled shipments delivered with instructions not to re-ice in transit. The tariffs mentioned only two methods of shipment, under ventilation and under refrigeration. On the former no charge was made in addition to the transportation rate, while on the latter the

defendants from any and all suits, claims, and damages brought by the original owners of the fruit.

Defendants raise numerous objections to complainant's claim for reparation. They allege that the original complaint was too general, that it did not sufficiently specify the shipments on which reparation is demanded, and that the prayer to "make such order for reparation and restitution by the defendants, respectively, to the complainant as shall be found just and proper" is not enough to put in issue the claim for reparation and so toll the statute of limitations on those shipments the statements of which were not filed within two years. Defendants also argue that complainant is a voluntary association and so can not recover reparation, since the intervening petitions fail to name the actual parties in interest on whose behalf reparation is asked. Further, it is alleged that while in our original report we expressly held open the case for consideration of reparation with regard to shipments of lemons upon which the \$1.15 rate therein found unreasonable had been charged, in our subsequent report in 20 I. C. C., 106, in which defendants' precooling charges were found unreasonable and the \$7.50 rate prescribed, no mention was made of any further proceedings for reparation. Defendants also deny that the complainant is entitled to reparation on shipments loaded less than seven tiers wide and two tiers high, arguing that only if the shipments fall within our order of January 14, 1911, can reparation be claimed. Moreover, it is alleged that since we have no jurisdiction over the through rate from California points to foreign countries we can allow no reparation on those shipments destined to points in Canada.

It is unnecessary to determine the force of these contentions, for we are of opinion that complainant must fail on another and broader ground urged by carriers' counsel. The effect of our order was to prescribe a complete readjustment in the carriers' charges. The \$7.50 rate which was thereby established carried with it the requirement that cars must be loaded seven tiers wide and two tiers high. Prior to this the ordinary refrigerator car, on account of the necessary circulation of air, could be loaded only six tiers wide and two tiers high. The loading requirement prescribed by the Commission resulted in an increase in the carload minimum, which materially increased the per car earnings. Under these circumstances we consider that no reparation should be awarded. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.*, 27 I. C. C., 165, 168. Investigation and Suspension Docket No. 24, 21 I. C. C, 546, 557, generally known as the *Warnock Case*. While complainant admits that the Commission found the \$7.50 rate reasonable only for the future, it contends that we should now determine the reasonableness of the rates in the past and award

reparation on that basis. The Commission, however, was considering a novel service only recently introduced, whose efficiency and permanence were in some degree problematical. Under such circumstances the question of fixing a reasonable rate is attended with no little uncertainty, and the immediate establishment of an appropriate and reasonable charge for the new service is possibly requiring more of the carriers than in fairness could be exacted. In *Investigation of Alleged Unreasonable Rates on Meats*, 28 I. C. C., 332, we said, at page 334:

These defendant carriers could not have been expected to establish voluntarily the rates found reasonable by this Commission. They could not have foreseen that rates of this kind even would be finally held lawful. Under the peculiar circumstances of this case we do not think the rates in effect should be declared unjust and unlawful until carriers were advised by the promulgation of the opinion of December 11, 1911, what reasonable rates in fact were.

Complainant argues, however, that reparation should be awarded on shipments moving subsequent to our order of January 14, 1911, and before the order for the reduction became effective. By section 15 our order can not take effect until after a reasonable time, which shall in no instance be less than 30 days after the service of the order. To award reparation between the date of service of the order and its effective date, therefore, would in substance be to disregard this statutory restriction and to require that the rates prescribed go into effect before the statutory period. Our finding was not, nor do we think it should have been, that the \$7.50 charge should become effective before June 15, 1911. For this reason we are of opinion that no reparation should be made on these shipments even if we were to consider that the statute of limitations had not run against them.

Further, complainant argues that the collection of refrigeration rates on pre-cooled shipments which moved prior to the establishment of the \$30 pre-cooling charge was unlawful in that it was without tariff authority. Complainant, however, used refrigerator cars in such movements, and to a certain extent at least refrigeration service as then practiced was accorded by the carriers. On such shipments we consider the refrigeration charges were lawfully applicable. No reparation being awarded in the other instances, it will likewise be denied here.

The petitions will be dismissed.

28 I. C. C.

No. 6917 and 6917 (Sub-Nos. 1 to 8).
HAYDEN BROS. COAL CORPORATION ET AL.
v.
DENVER & SALT LAKE RAILROAD COMPANY ET AL.

Submitted January 13, 1915. Decided April 27, 1916.

Through routes and joint rates on soft coal in carloads established from Oak Hills, Colo., and points taking the same rates, to stations in Kansas, Nebraska, Missouri, Iowa, and South Dakota, on the Atchison, Topeka & Santa Fe Railway, the Missouri Pacific Railway, the Chicago & North Western Railway, and the Chicago, St. Paul, Minneapolis & Omaha Railway. Section 15 of the act precludes the establishment of through routes and joint rates via the Union Pacific Railroad from Oak Hills to stations on the Missouri Pacific Railway in Kansas south of Kanopolis, Kans.

Carle Whitehead and A. L. Vogl for complainants.

C. C. Wright and R. H. Widdicombe for Chicago & North Western Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company.

N. H. Loomis and H. A. Scandrett for Union Pacific Railroad Company.

Robert Dunlap, T. J. Norton, J. J. Coleman, and J. L. Coleman for Atchison, Topeka & Santa Fe Railway Company.

H. G. Herbel and F. G. Wright for Missouri Pacific Railway Company.

W. A. Holley for Chicago, Burlington & Quincy Railroad Company.

Tyson Dines, jr., for Denver & Salt Lake Railroad Company.

Caldwell Yeaman for Union Coal & Coke Company and other interveners.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

The complainants, the Hayden Bros. Coal Corporation, the Moffat Coal Company, the Routt County Fuel Company, and the Yampa Valley Coal Company, own and operate coal mines, all of which are located within 6 miles of Oak Hills, Routt county, Colo., on the Denver & Salt Lake Railroad, hereinafter called the Moffat road. By complaints, filed in May and June, 1914, complainants ask for the establishment of through routes and reasonable joint rates on soft coal in carloads from the complainants' mines to consuming points in Kansas,

Nebraska, Missouri, Iowa, and South Dakota, on the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, the Missouri Pacific Railway, the Chicago & North Western Railway, and the Chicago, St. Paul, Minneapolis & Omaha Railway, hereinafter called the Omaha. The complainants allege that the defendants' failure to establish through routes and joint rates is in violation of sections 1 and 3 of the act to regulate commerce. In addition to the main complaint there are eight subcomplaints, in each of which complainants ask for the establishment of through routes and joint rates to certain specified destinations on the defendants' lines.

There are a number of coal-producing districts in Colorado and Wyoming from which coal is shipped in large quantities to points in Kansas, Nebraska, and neighboring states. Moreover, coal is shipped into this territory from Oklahoma, Arkansas, southwestern Missouri, Illinois, and from eastern fields via the great lakes. This results in a tendency toward an overproduction of coal as regards this general region. Every carload which moves into this consuming territory from one district almost of necessity displaces a carload of coal from a competing district, so that not only is there severe competition in these markets between the various producers but between the carriers as well, for in most instances the different coal fields are served by different railroads.

The coal mined by the complainants is a high-grade bituminous variety similar to that produced in the Walsenburg district, the Trinidad district, the Rockvale district, at Rock Springs, Wyo., and in the South Canon and Palisade districts on the Colorado Midland Railway. The complainants' mines have been worked for only a few years, yet while the quantity of coal produced in Routt county is small compared with the production in some of the older fields, the complainants' coal has made a favorable impression in the markets and their output has increased rapidly. One of the complainants has recently opened a new mine with a capacity of 2,000 tons daily, while several other mines have recently been opened a short distance west of Oak Hills, on the Moffat road. The complainants could increase their output materially if they could find buyers for their coal, but they are unable to reach a large part of the territory in question because of the relatively high transportation rates which they are obliged to pay.

Twenty-two coal companies operating in the Walsenburg and Trinidad districts have intervened in opposition to the complaint. They frankly state that their interest in this proceeding is due principally to the fact that a widening of the complainants' markets would probably restrict somewhat the sales of Walsenburg and Trinidad coal in this territory.

In most instances the complainants ask for the same rates from Oak Hills to the various points of destination as apply from Walsenburg.

The defendants object to establishing the joint rates sought by the complainants, first, because they are interested in carrying coal from other districts, and their participation in joint rates from the Oak Hills district would give them shorter hauls and consequently diminish their revenues; and, second, because the complainants' mines are geographically so disadvantageously located that they are alleged to be not lawfully entitled to the rates sought.

The average distance from the complainants' mines to Denver, Colo., is 195 miles. The operating conditions on the Moffat road are extremely difficult. It crosses the main range of the Rocky Mountains at an altitude of 11,660 feet, with 27 miles of 4 per cent grade, and is described by one of the defendants' witnesses as "the most difficult piece of railroad in the United States."

The rates on coal from most of the producing points in Colorado and Wyoming to destinations in Kansas and Nebraska are made on the Walsenburg basis, or bear a fixed relation to the Walsenburg rates. The consuming territory is roughly divided into two rate groups. Rates herein are stated in dollars and cents per net ton, and the rates given apply on lump coal unless otherwise specified. The so-called "Missouri River rate" from Walsenburg is \$3.75. This rate applies as far east as Omaha, Nebr., and St. Joseph, Mo., and as far west, generally speaking, as the middle of Kansas. The western parts of Kansas and Nebraska constitute another group to which the rate is generally \$3.50. On the Union Pacific the \$3.50 group extends as far east as Salina, Kans. On the Missouri Pacific in Kansas there is a \$3.25 group as far east as Geneseo, and a small \$3.50 group between Geneseo and Delavan, east of which the Missouri River rate of \$3.75 applies. The rates from Walsenburg to points on the Santa Fe in southern Kansas are on a somewhat lower basis, presumably because of the proximity of competing mines to the south, particularly in Oklahoma and Arkansas.

In *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, 17 I. C. C., 479, we required the Santa Fe in conjunction with the Colorado & Southern to establish from the Walsenburg district joint rates to points on the Santa Fe line in Kansas not in excess of the rates from Rockvale, Colo. In *Rates from Walsenburg Coal Field*, 26 I. C. C., 85, we modified our finding to the extent of permitting the Santa Fe to establish rates from the Walsenburg district to stations on its line in Kansas not more than 10 cents per net ton higher than the rates contemporaneously in effect from the Canon City field. The present rates from Walsenburg to points in Kansas on the Santa Fe are

therefore uniformly 10 cents per net ton higher than the rates to the same points from Rockvale and Canon City.

The Union Pacific has voluntarily established the Walsenburg rates from Rock Springs, Wyo., to stations on its line in Nebraska. The coal produced at Rock Springs is similar in quality to that produced in Routt county, and competes with the Routt county coal. The Walsenburg rates have also been recently extended to Kemmerer, Wyo., 85 miles west of Rock Springs on the Oregon Short Line, and to Evanston, Wyo., 115 miles west of Rock Springs on the Union Pacific. Moreover, joint rates have been voluntarily established from the Oak Hills district to points in Kansas and Nebraska on the Union Pacific Railroad and the Chicago, Burlington & Quincy Railroad, and also to stations on the Chicago & North Western from Manville, Wyo., as far east as Crookston, Nebr., including the branch which extends northward into South Dakota from Dakota Junction, Nebr. In *Coal Rates from Oak Hills, Colo.*, 30 I. C. C., 505, we required the Chicago, Rock Island & Pacific Railway to establish joint rates from Oak Hills to stations on its line in Kansas and Nebraska not in excess of the rates to the same destinations from Walsenburg. In that case we observed that the Rock Island had voluntarily established the Walsenburg basis of rates from Oak Hills to certain points on its line in Colorado east of and including Limon, the junction point where Walsenburg and Oak Hills coal meet on the way east, and that the Union Pacific and the Burlington had established similar rates from Oak Hills to stations on their lines. In our supplemental report in the case last cited, 35 I. C. C., 456, we established divisions of the joint rates as between the Moffat road and the Rock Island. In *South Canon Coal Co. v. Colorado Midland Ry. Co.*, 38 I. C. C., 174, we held that the rates on bituminous coal from South Canon, Colo., to stations in Wyoming, South Dakota, Nebraska, and Kansas on the Burlington, the Union Pacific, and the St. Joseph & Grand Island, should not exceed the rates contemporaneously maintained from Walsenburg by more than 25 cents per net ton. South Canon is on the Colorado Midland Railway, 213 miles west of Colorado Springs, Colo. In *Northern Colorado Coal Co. v. C., W. & E. Ry. Co.*, 38 I. C. C., 73, we held that the rates on soft coal from Coalmont, Colo., to points in Colorado, Wyoming, Nebraska, and Kansas should not exceed by more than 25 cents per net ton the rates contemporaneously maintained from Hanna, Wyo. Coalmont, the southern terminus of the Colorado, Wyoming & Eastern Railway, is located 111 miles south of Laramie, Wyo. The complainants maintain that these extensions of the Walsenburg rates to other mines have made the competition in this territory even more severe and furnish an added reason for establishing joint rates from

39 I. C. C.

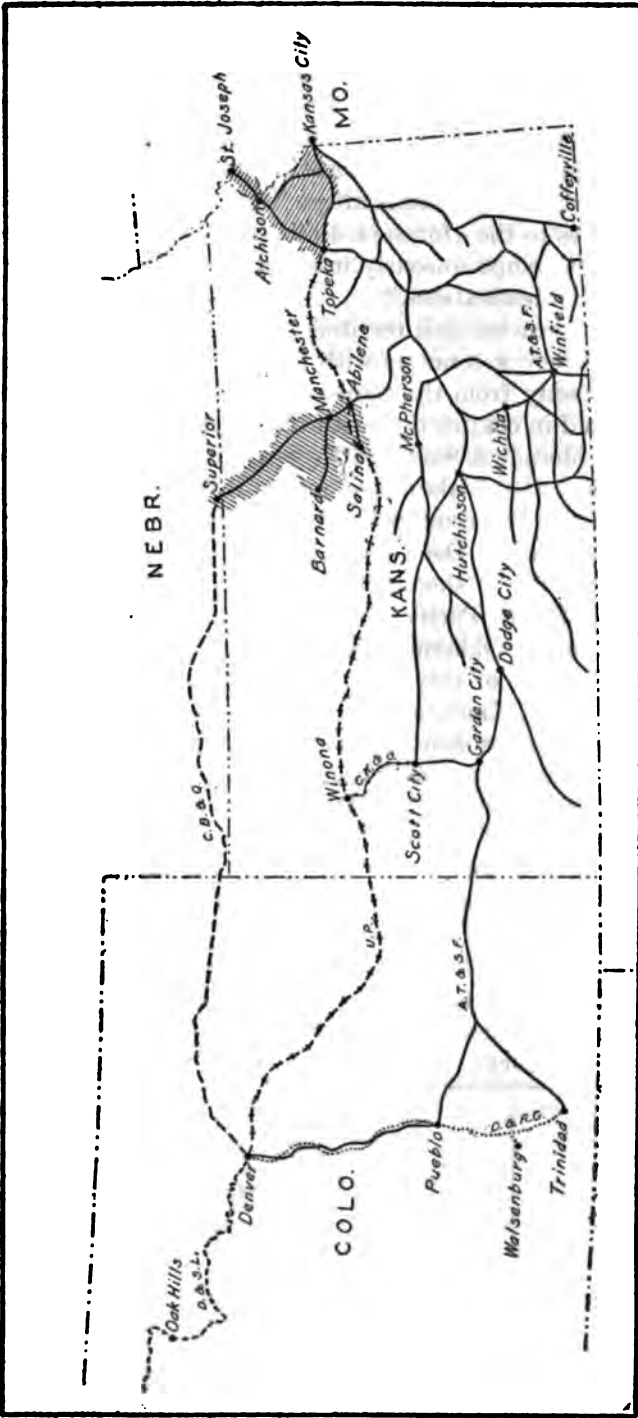
their mines to those parts of the consuming territory to which no joint rates are now published.

The matters here in issue were pending on the Commission's informal docket for several months prior to the filing of formal complaints. As early as October, 1913, the complainants requested the Commission to take the matter up with the carriers. From the correspondence which followed it appears that the carriers made a bona fide effort to meet the complainants' demands, but that the traffic officials were hopelessly at variance as to the divisions which the various carriers should receive out of the joint rates. The Moffat road, although willing to join with the other lines in establishing joint rates, insisted that its division to any destination east of Denver should not be less than \$1.25 per net ton, pointing out that its divisions of the joint rates to points on the Union Pacific and the Burlington were \$1.30 on lump coal and \$1.40 on slack. This division of \$1.25 per net ton would afford the Moffat road 6.4 mills per ton-mile. In our supplemental report in *Coal Rates from Oak Hills, Colo., supra*, we allowed the Moffat road a division of \$1.18 per ton on soft coal other than nut, slack, and pea, and \$1.12 per ton on nut, slack, and pea, on shipments to all destinations on the line of the Rock Island in Kansas, Nebraska, and Missouri, shown in the Denver & Salt Lake Railroad Company tariff I. C. C. No. 20. By our order of October 12, 1915, however, this case was reopened for further argument upon the question of the reasonableness of the divisions therein prescribed. The other carriers defendant in the present proceeding generally demanded divisions which would allow them the same revenue per ton-mile as they were receiving on coal moving from the mines on their own lines, and when these various divisions were added together the complainants deemed the resulting joint rates prohibitory. Nor would the carriers accept the joint rates asked by the complainants, alleging that the revenue was "too thin to go around." Formal complaints were then filed.

The present rates on soft coal in carloads from complainants' mines to the various points of destination involved are combination rates, and are practically prohibitive. In so far as we hereinafter prescribe joint rates over the defendants' lines, we find that the present combination rates are both unreasonable and unjustly discriminatory.

COMPLAINT IN DOCKET NO. 6917. STATIONS IN KANSAS ON THE SANTA FE.

In the main complaint, No. 6917, and subcomplaints Nos. 2 and 3, complainants ask that through routes and reasonable joint rates be established from Oak Hills to stations on the Santa Fe in Kansas. The points involved in No. 6917 are those between Scott City and Garden City, both inclusive, "and also all destinations on said respondent's



Stations in Kansas, Missouri, and Nebraska on the Santa Fe.

lines east, northeast, or southeast, of said Scott City or Garden City," except stations from Topeka to Kansas City, Mo., both inclusive, and stations north thereof, and except stations on the Superior, Nebr., branch and its branches north of Abilene, including the Salina and Barnard branches. Joint rates to the stations embraced in these exceptions are requested in subcomplaint No. 2 and subcomplaint No. 3, respectively. The complainants allege "that the joint through rates from their mines to the aforesaid destinations should not exceed the through rates contemporaneously in effect from the Walsenburg district to the same destinations."

The Santa Fe reaches this territory with its own rails via Pueblo from Denver, where it connects with the Moffat road. Its own rails also extend directly from the Canon City-Rockvale district to these destinations, and in conjunction with the Denver & Rio Grande Railroad and the Colorado & Southern Railway it has through routes and joint rates from the Walsenburg mines to aforesaid destinations. Although the natural route from Oak Hills to these destinations would appear to be via Denver and the Santa Fe, the complainants suggest that the traffic should be routed from Denver to Winona, Kans., via the Union Pacific, from Winona to Scott City via the Colorado, Kansas & Oklahoma Railroad, and thence via the Santa Fe. In justification of this four-line route the complainants show that to Hutchinson, Kans., and points east thereof the distances via this route are 39 miles shorter than the distances via the Santa Fe from Denver; they also show that the operating conditions on the Santa Fe between Denver and Pueblo are somewhat more difficult than on other parts of the line. The Santa Fe, however, questions the Commission's authority to establish through routes which would deprive it of its long haul from Denver, when the differences in distance are so slight, and furthermore objects to putting in the Walsenburg rates from Oak Hills over any route, since the distances from Oak Hills are materially greater, both absolutely and relatively. The following table, submitted as an exhibit by the Santa Fe, is self-explanatory:

To—	From—		Per cent distance Oak Hills over Walsenburg.	From Oak Hills via Denver and Santa Fe.	Rates per ton from Walsenburg.	
	Oak Hills, Colo. ¹	Walsenburg, Colo.			Lump coal.	Nut coal.
	<i>Miles.</i>	<i>Miles.</i>		<i>Miles.</i>		
Garden City.....	526	287	83.3	529	\$2.85	\$2.35
Dodge City.....	576	337	70.9	579	2.85	2.35
Kinsley.....	612	373	63.8	615	3.35	2.60
Larned.....	630	398	58.3	640	3.35	2.60
Hutchinson.....	660	457	44.4	699	3.35	2.60
McPherson.....	670	482	39	724	3.35	2.60
Florence.....	717	518	38.4	760	3.35	2.60
Moline.....	808	600	33.8	842	3.60	3.10
Coffeyville.....	865	662	30.7	904	3.85	3.35

¹ Via Denver, Winona, and Scott City.

It will be observed that the distances via the Santa Fe to the points west of Hutchinson are only slightly greater than the distances via the route which the complainants suggest, while to Hutchinson and points east thereof the difference varies from 39 miles to 54 miles. The route via Winona and Scott City involves a four-line haul, and since the differences in distances are so slight, we are of opinion that the Santa Fe can not reasonably be required to participate in through routes and joint rates via Winona and Scott City. Moreover, if the traffic moved over the proposed route via Winona and the Union Pacific, the application of the Walsenburg rates would result in departures from the fourth section at certain points in western Kansas. But this difficulty will not occur if the route is wholly over the Santa Fe via Pueblo.

There remains the question as to the propriety of requiring the Santa Fe to join with the Moffat road in establishing joint rates from Oak Hills via Denver and Pueblo. The present rates from Oak Hills to these destinations are made by combination on Denver, and are so high in certain instances as to be prohibitive. Thus the Moffat road's rate on lump coal from Oak Hills to Denver is \$1.60 per net ton. No commodity rates applicable to coal via the Santa Fe are published from Denver to these destinations, and the class D rate applies. The class D rate from Denver to Garden City, for example, is 29 cents per 100 pounds, or \$5.80 per net ton, making the total rate from Oak Hills to Garden City \$7.40 per net ton. It is needless to say that no coal moves under these rates. In *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, *supra*, at page 483 *et seq.*, we said:

* * * It should be remembered that the very high rates shown from Walsenburg * * * accomplish what they are confessedly intended to do; that is, they prohibit the movement of traffic under them * * *. It is not often that a violation of the requirement of the first section, that charges for interstate transportation shall be reasonable, is so freely admitted by a carrier subject to the act, and our only comment is to repeat the language of Congress contained in the act, that "every unjust and unreasonable charge for such service or any part thereof is hereby prohibited and declared to be unlawful." * * *

After careful consideration of all the facts, circumstances, and conditions bearing upon the questions involved, we conclude that joint rates should be accorded by defendants on coal from the Walsenburg district to points on the Santa Fe lines in Kansas. * * *

The Santa Fe does not deny that the complainants are lawfully entitled to reasonable joint rates, but argues that they are not entitled to the Walsenburg rates inasmuch as the distances are from 30.7 per cent to 83.3 per cent greater than the distances from Walsenburg, while the operating conditions over the Moffat road for its 195-mile

haul to Denver are far more severe than those existing between Walsenburg and Pueblo. It also appears that the cost of handling freight on the Santa Fe's line from Denver to Pueblo is somewhat greater than on other portions of its road.

The present rate on lump coal from Walsenburg to points in Kansas west of and including Dodge City is \$2.85 per net ton. East of Dodge City a \$3.35 group extends as far as Saffordville, 11 miles west of Emporia. Between Saffordville and Emporia a small group takes a rate of \$3.60, which applies also on the branch extending south to Moline. East of Emporia a \$3.85 group extends to the Missouri River. The complainants originally asked for the Walsenburg rates from Oak Hills to all these stations. A rate of \$3.50 on nut coal, however, applies from Oak Hills to Winona and other intermediate stations on the Union Pacific on the route suggested by the complainant, so to establish the Walsenburg rate of \$2.35 on nut coal to Dodge City and stations west, and a rate of \$2.85 as far east as Saffordville, would result in departures from the long-and-short-haul clause of the fourth section of the act. The complainant asks leave, therefore, to amend its complaint so as to make \$3.50 the minimum rate on nut coal. If joint rates on the Walsenburg basis were established via the line of the Santa Fe from Denver there would, of course, be no departure from this provision of the fourth section.

The Santa Fe offered an exhibit showing the revenue which would accrue to it on coal from the Oak Hills district if joint rates on the Walsenburg basis were established to the stations shown, allowing the Moffat road \$1.25, which it demands as its division. The exhibit is here reproduced in part:

Destinations.	From Denver via the Santa Fe.	Walsenburg rate less Moffat road proportion of \$1.25 per ton.		Revenue per ton- mile.	
		Lump.	Nut.	Lump.	Nut.
	<i>Miles.</i>			<i>Mills.</i>	<i>Mills.</i>
Garden City.....	334	\$1. 60	\$1. 10	4.8	3.3
Dodge City.....	384	1. 60	1. 10	4.7	2.9
Kinsley.....	420	2. 10	1. 60	5.0	3.8
Larned.....	445	2. 10	1. 60	4.7	3.6
Hutchinson.....	504	2. 10	1. 60	4.2	3.2
Harper.....	565	2. 10	1. 60	3.7	2.8
McPherson.....	529	2. 10	1. 60	4.0	3.0
Moline.....	647	2. 35	1. 85	3.6	2.9
Chanute.....	694	2. 60	2. 10	3.7	3.0

From the record it clearly appears that the rates from Oak Hills should be somewhat higher than the rates from Walsenburg. If

joint rates were established from Oak Hills 50 cents per net ton higher than from Walsenburg the result would be as follows:

From Oak Hills, Colo., to—	Distance via Denver and Santa Fe.	Rate on lump coal.	Revenue per ton-mile.	Rate on nut coal.	Revenue per ton-mile.
	<i>Miles.</i>		<i>Mills.</i>		<i>Mills.</i>
Garden City.....	529	\$3.35	6.3	\$2.85	5.4
Dodge City.....	579	3.35	5.8	2.85	4.9
Kinsley.....	615	3.85	6.3	3.35	5.4
Larned.....	640	3.85	6.0	3.35	5.2
Hutchinson.....	699	3.85	5.5	3.35	4.8
McPherson.....	724	3.85	5.3	3.35	4.6
Harper.....	760	3.85	5.1	3.35	4.4
Moline.....	842	4.10	4.9	3.60	4.3
Chanute.....	889	4.35	4.9	3.85	4.3

Upon consideration of all the evidence we are of opinion and find that the defendants, the Moffat road and the Santa Fe, should establish through routes and joint rates for the transportation of soft coal from the Oak Hills district to destinations on the Santa Fe, described in the main complaint, No. 6917, which should not exceed by more than 50 cents per net ton the rates now in effect to the same destinations from the Walsenburg district. While we consider that the traffic should move via Denver and Pueblo over the Santa Fe, and while we have ample power to prescribe joint rates over that specific route, we shall allow the defendants to determine the actual routing at their convenience. This discretion to route through such junction points as may seem most practicable applies not only to the main complaint, but to all the subcomplaints herein in which we prescribe joint rates.

SUBCOMPLAINT NO. 2. STATIONS IN KANSAS AND MISSOURI ON THE
SANTA FE.

In subcomplaint No. 2 the complainants ask for the establishment of joint rates on the Walsenburg basis from Oak Hills to stations on the Santa Fe between Topeka and Kansas City, between Topeka and St. Joseph, Mo., and between Kansas City and Atchison, Kans. The complainants suggest that coal consigned to these points be routed via the Union Pacific from Denver to Topeka, thence via the Santa Fe to destination. The following table, filed as an exhibit by the Santa Fe, shows seven typical destinations, the distances from Walsenburg, and the distances from Oak Hills via the Santa Fe as compared with the distances over the route selected by the complainants.

To—	From Walsen- burg.	From Oak Hills via Denver and Santa Fe.	From Oak Hills via complain- ants' sug- gested route.	Difference in favor of complain- ants' sug- gested route.
	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
Meriden, Kans.....	635	876	779	97
Hawthorne, Kans.....	666	908	810	98
Atchison, Kans.....	674	915	818	97
Lawrence, Kans.....	644	886	794	92
Leavenworth, Kans.....	688	929	833	96
Wilder, Kans.....	666	908	817	91
Holliday, Kans.....	662	904	821	83

The route which the complainants propose involves a three-line haul, as compared with a two-line haul via Denver and the Santa Fe. If joint rates were established via the suggested route, the Santa Fe shows that it would receive only the "tail end" of the haul, varying from 11 miles to 57 miles in length. We are of opinion that section 15 of the act precludes the establishment of joint rates via the proposed route in that it would unjustifiably short haul the Santa Fe.

There remains the question as to the propriety of establishing through routes and joint rates to these destinations via Denver, Pueblo, and the Santa Fe. The Santa Fe admits that joint rates should be established but denies that the Walsenburg basis of \$3.85 should apply. The above table shows that the distances from Oak Hills exceed the distances from Walsenburg by about 240 miles. There is merit in the Santa Fe's contention that this difference in distance is sufficient to justify higher rates from Oak Hills than from Walsenburg, even if the severity of the operating conditions on the Moffat road be not considered. The Rock Island, the Union Pacific, and the Burlington have established joint rates from Oak Hills to points in this territory which are on the Walsenburg-Missouri River basis of \$3.75, or 10 cents per ton less than the Santa Fe's rate from Walsenburg to the same territory. The average distance from Oak Hills to a number of destinations which take the Missouri River rate of \$3.75 is 785 miles, while the average distance via Denver and the Santa Fe to the destinations shown in the above table is 903.7 miles.

We are of opinion and find that the Santa Fe should join with the Moffat road in establishing through routes and joint rates from Oak Hills to the destinations involved in the subcomplaint No. 2, which rates should not exceed by more than 50 cents per net ton the rates now in effect from Walsenburg to the same destinations.

SUBCOMPLAINT NO. 3. STATIONS IN KANSAS ON THE SANTA FE.

In subcomplaint No. 3 complainants ask for the establishment of joint rates on the Walsenburg basis from Oak Hills to stations on the

line of the Santa Fe extending northward from Abilene, Kans., to Superior, Nebr., including stations on the Salina and Barnard branches. In the original complaint it was proposed to route this traffic from Denver to Superior via the Burlington, thence via the Santa Fe to destinations. The defendants showed, however, that this routing would result in departures from the fourth section, the rates from Oak Hills to Superior and a few points west thereof on the Burlington being on a \$3.75 basis, while the Santa Fe's rates from Walsenburg to Salina, Abilene, and Manchester, and stations intermediate thereto, are on a \$3.60 basis. To obviate this difficulty the complainants suggest in their brief that the traffic could be routed from Denver to Abilene via the Union Pacific, thence via the Santa Fe to destinations. The Union Pacific, however, is not a party defendant to this subcomplaint, nor has the complaint been so amended as to make the Union Pacific a party. We could not require that carrier, therefore, on this record to establish through routes to these destinations or to participate therein. Furthermore, the tariffs show that fourth section violations would result even if the Abilene route were adopted, the rates west of Abilene on the Union Pacific being higher in some instances than the rates sought by the complainants. The only question properly before us on the present record is whether joint rates should be established via Superior as originally prayed.

The following table, compiled from one of the Santa Fe's exhibits, shows that the distances from Oak Hills via Superior to representative stations in this district are materially less than the distances via Denver and the Santa Fe; and that the distances from Oak Hills are approximately the same as the distances from Walsenburg:

To—	From Oak Hills via complainants' route.	From Oak Hills via Denver and Santa Fe.	From Walsenburg.	Rate from Walsenburg (lump).
	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	
Webber, Kans.....	601.	928	686	\$3.85
Barnard, Kans.....	718	897	655	3.85
Kackley, Kans.....	620	909	667	3.85
Aurora, Kans.....	646	883	641	3.85
Talmage, Kans.....	681	848	606	3.60
Manchester, Kans.....	675	854	612	3.60
Oak Hill, Kans.....	664	865	623	3.85

The principal witness for the Santa Fe admitted at the hearing that the route via Superior suggested by the complainants "would seem to be the natural one to move the traffic." The principal objection to the application of Walsenburg rates via this route is that it would involve a three-line haul, while from Walsenburg there is only a two-line haul. The complainants show, however, that extra line

hauls are commonly disregarded in making rates from the Colorado mines to Kansas and Nebraska points. In speaking of extra line hauls we said in the *Sheridan Chamber of Commerce Case*, 26 I. C. C., 638, 649, in quoting from the *Investigation of Alleged Unreasonable Rates on Meats*, 23 I. C. C., 656, 661:

When distances of over 500 miles are involved, the fact that the service is by two lines is largely negligible.

The Commission then continued, in explanation of this principle:

Where the physical connection between connecting carriers is as simple as in these small western towns, involving no expensive terminal service, the additional cost due to the switching movement is very small; in fact, so small that it may not properly be made the basis for an additional charge for a two-line haul of substantial length.

What was there said of a two-line haul will equally apply to a three-line haul. Nor do we think that the alleged deviation from the rule of the fourth section should prevent this routing. In applying group rates to this territory great differences in distance are frequently overlooked. The Burlington's rate on lump coal, for example, from Oak Hills to Superior and Red Cloud, Nebr., is \$3.75, yet the same rate applies as far east as Omaha and St. Joseph.

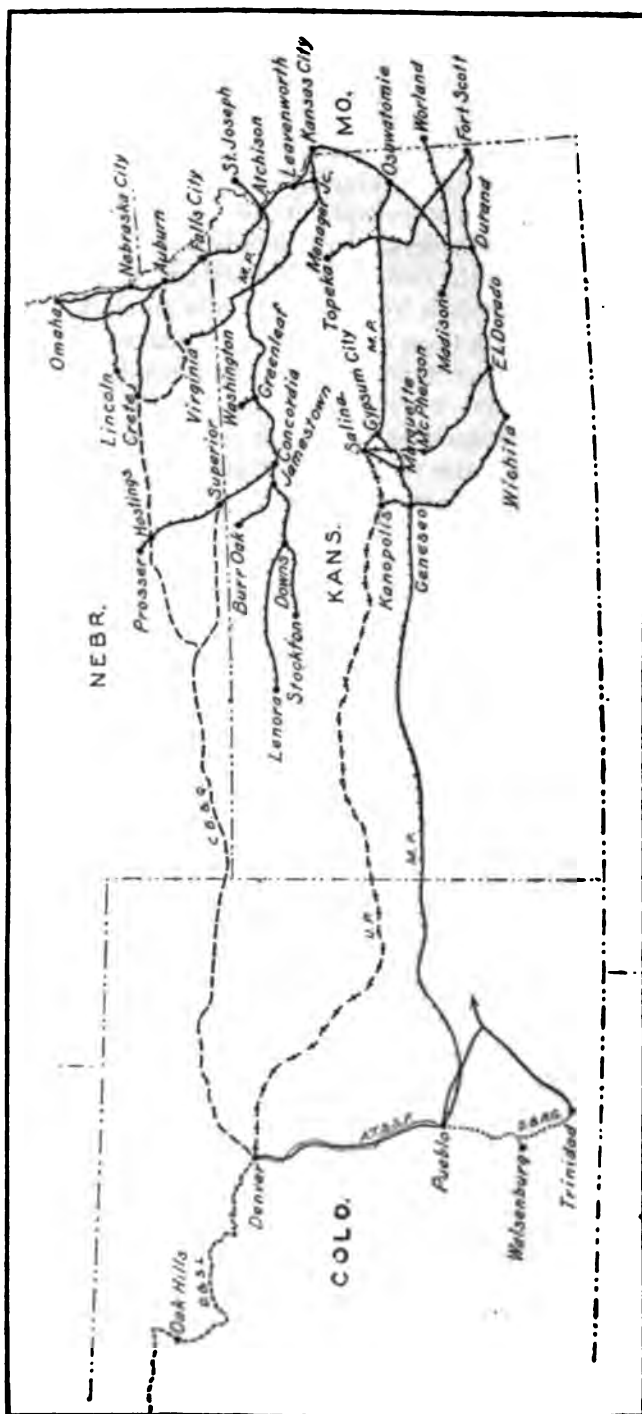
Upon consideration of all the evidence we are of opinion and find that the carriers defendant in subcomplaint No. 3 should establish through routes and joint rates on soft coal from Oak Hills to the destinations involved which shall not exceed \$3.75 per net ton. We are unable on the present record, however, to fix a relationship between the rates on lump coal and the rates on coal of other kinds. There appears to be no uniformity among the carriers in this territory in making rates on the different kinds of coal, except that the rates on lump coal are commonly observed as maxima. The Santa Fe's rates on nut coal from Walsenburg and Canon City to its stations in Kansas are commonly less than its rates on lump coal, the difference varying from 25 cents to 50 cents per net ton. In the tariffs published by the Moffat road in conjunction with the Burlington and the Union Pacific, naming rates from the Oak Hills district to stations in Kansas and Nebraska, the rates on slack and pea coal are in some instances 10 cents per net ton less than the rates on other kinds, though to most destinations the rates on all kinds are the same. To Superior and stations on the Burlington immediately west of Superior the rate on slack and pea from Oak Hills is \$3.65, and on all other kinds \$3.75. In the tariff published by the Moffat road and the Rock Island in compliance with our conclusions in the *Oak Hills Case*, *supra*, the rates on nut, slack, and pea are in most instances 25 cents per net ton less than the rates on other kinds. The rates of the Union Pacific from producing points in Utah and Wyoming to stations in Nebraska are

from 50 cents to 75 cents lower on slack than on other kinds. From Rock Springs, Wyo., to stations in Kansas the rates on all kinds of coal are generally the same, while from Hanna, Wyo., east of Rock Springs, the rates on slack to the same destinations are 25 cents less than the rates on other kinds. Our order will therefore require the establishment of rates on all kinds of coal from Oak Hills to the destinations involved in subcomplaint No. 3 not in excess of \$3.75 per net ton, but if defendants deem it advisable to establish rates on the lower grades on the basis of differentials, they of course may do so. If the rates published by the defendants on slack, pea, or nut coal in compliance with these conclusions are relatively unreasonable, or result in unjust discrimination, the complainants may bring the matter to our attention by a supplemental proceeding which puts directly in issue the question as to the proper relationship which should obtain between the rates on lump coal and the rates on other kinds of coal to the stations embraced in subcomplaint No. 3.

**SUBCOMPLAINT NO. 1. STATIONS IN KANSAS AND NEBRASKA ON THE
MISSOURI PACIFIC.**

In subcomplaint No. 1 complainants ask for through routes and joint rates from the Oak Hills district to points on the Missouri Pacific Railway in Kansas and Nebraska on what is known as the Central branch and Omaha division. This includes all Missouri Pacific points on and north of the line running from Kansas City through Goffs to Stockton and Lenora, Kans.; also on the line extending from Kansas City to Omaha, with its branches to Menager Junction, Kans., St. Joseph, Mo., and Crete and Lincoln, Nebr. The Missouri Pacific, in connection with the Denver & Rio Grande Railroad, maintains a blanket rate of \$3.75 on lump coal from Walsenburg to all of the destinations in question. The complainants ask that that rate be applied as a maximum from Oak Hills. The complainants propose that traffic consigned to Missouri Pacific stations west of Goffs, Kans., and south of Superior be routed via the Burlington to Superior, thence via the Missouri Pacific to destinations; that traffic consigned to stations between Superior and Prosser be routed via the Burlington to Hastings, Nebr., thence via the Missouri Pacific to destinations, while Crete, Lincoln, and Auburn, Nebr., are suggested as convenient points of interchange between the Missouri Pacific and the Burlington for shipments to stations in eastern Kansas and Nebraska.

The Missouri Pacific objects to the proposed route and joint rates from Oak Hills to these points; first, because the Burlington and the Union Pacific carry Walsenburg rates from Oak Hills to many of the stations involved, and therefore, "there would hardly be any necessity for the establishment of rates to points in Nebraska on



Stations in Kansas and Nebraska on the Missouri Pacific.

the Missouri Pacific;" second, that if the Missouri Pacific be compelled to join in these through routes and joint rates, the traffic must go via the Denver & Rio Grande to Pueblo, thence via Missouri Pacific to destinations, a route which would be materially longer than the direct east and west lines of the Burlington and the Union Pacific; and third, that the Missouri Pacific hauls coal to this territory from southern Illinois, southwestern Missouri, Oklahoma, Arkansas, and southern Kansas, and from the Walsenburg district in connection with the Denver & Rio Grande Railroad, with which it is affiliated, and that any Routt county coal which it might haul from Pueblo would displace coal from some other district.

The following table, filed as an exhibit by the complainants, shows the distances from Walsenburg to 40 representative points on the Missouri Pacific in this territory, and the distances from Oak Hills via the routes proposed by the complainants:

Destination.	Miles from Walsenburg.	Miles from Oak Hills.	Walsenburg rates proposed as rates from Oak Hills.
Lenora, Kans.....	651	767	\$3. 75
Logan, Kans.....	626	742	3. 75
Portis, Kans.....	575	691	3. 75
Stockton, Kans.....	608	724	3. 75
Osborne, Kans.....	576	692	3. 75
Downs, Kans.....	566	682	3. 75
Soloman Rapids, Kans.....	547	663	3. 75
Beloit, Kans.....	542	658	3. 75
Scottsville, Kans.....	554	646	3. 75
Burr Oak, Kans.....	594	674	3. 75
Mankato, Kans.....	585	665	3. 75
Jamestown, Kans.....	580	640	3. 75
Prosser, Nebr.....	668	696	3. 75
Hastings, Nebr.....	664	682	3. 50
Lawrence, Nebr.....	630	606	3. 75
Superior, Nebr.....	605	595	3. 75
Scandia, Kans.....	581	619	3. 75
Yuma, Kans.....	566	634	3. 75
Clifton, Kans.....	592	660	3. 75
Greenleaf, Kans.....	613	681	3. 75
Washington, Kans.....	620	688	3. 75
Irving, Kans.....	635	703	3. 75
Bigelow, Kans.....	834	709	3. 75
Virginia, Nebr.....	856	804	3. 75
Armour, Nebr.....	846	794	3. 75
Axtell, Kans.....	824	772	3. 75
Goffs, Kans.....	798	745	3. 75
Denison, Kans.....	768	775	3. 75
Menager Junction, Kans.....	714	828	3. 75
Lansing, Kans.....	722	836	3. 75
Welborn, Kans.....	702	838	3. 75
Louisville, Nebr.....	875	724	3. 75
Walton, Nebr.....	891	688	3. 75
Berlin, Nebr.....	856	725	3. 75
Douglas, Nebr.....	862	693	3. 75
Plattsmouth, Nebr.....	872	761	3. 75
Nebraska City, Nebr.....	845	738	3. 75
Falls City, Nebr.....	794	789	3. 75
Hiawatha, Kans.....	780	813	3. 75
Leavenworth, Kans.....	719	874	3. 75
Average.....	692. 65	712. 85	3. 75

From this table it appears that the average distance from Oak Hills to these destinations is approximately but 20 miles greater than that from Walsenburg. The Missouri Pacific's rate from Walsenburg to

all this territory is \$3.75, although the distances range from 542 miles to 891 miles. The Burlington, the Rock Island, and the Union Pacific join with the Moffat road in publishing joint rates from the Oak Hills district to points in this same territory on the \$3.75 basis, although many of the distances are greater than those shown above. The following table, filed as an exhibit by the complainants, shows the distances from Oak Hills to 13 destinations in this territory on the Burlington, the St. Joseph & Grand Island, and the Union Pacific:

Destination.	Route.	Miles from Oak Hills.	Rate from Oak Hills.
Council Bluffs, Iowa.....	C., B. & Q.	738	\$3. 75
Omaha, Nebr.....	do.	734	3. 75
Chalco, Nebr.....	do.	718	3. 75
Pacific Junction, Iowa.....	do.	755	3. 75
Havelock, Nebr.....	do.	684	3. 75
St. Joseph, Mo.....	do.	800	3. 75
Campbellton, Mo.....	C., B. & Q. and St. J. & G. I.	861	¹ 3. 75
Linden, Mo.....	do.	858	¹ 3. 75
Nashua, Mo.....	do.	855	¹ 3. 75
Leavenworth, Kans.....	U. P.	831	3. 75
Kansas City, Mo.....	do.	836	3. 75
Topeka, Kans.....	do.	769	3. 75
Marysville, Kans.....	do.	772	3. 75
Average.....		785	3. 75

¹ Rate canceled since the hearing.

Nor will the fact that the routes proposed by the complainants include three carriers while only two carriers participate in the traffic from Oak Hills to destinations on the Union Pacific, the Burlington, and the Rock Island properly preclude the establishment of the route prayed. We are not persuaded that higher rates should be established to the Missouri Pacific stations in question, especially since blanket rates covering wide areas have been voluntarily established by the carriers in this territory, and since producing districts have likewise been grouped under common rates in spite of material differences in distance and in operating conditions. As noted above, the complainants also cite several instances in which extra line hauls are disregarded in making rates in this territory.

It is further contended by the Missouri Pacific that traffic to all destinations embraced in this complaint should be hauled by the Denver & Rio Grande from Denver to Pueblo, thence by the Missouri Pacific to destination. The Denver & Rio Grande and the Missouri Pacific are operated under a common ownership, and the routing via Pueblo would afford them much longer hauls than the routes proposed by the complainants. The distances via Pueblo, however, are materially greater than the distances via the routes proposed. To points west of Irving, Kans., the difference is approximately 185

miles in favor of the route which the complainants have suggested. To Beloit, a typical point, the distance via Pueblo is 607 miles, while via Superior it is only 472 miles. Moreover, shipments consigned to points west of Irving involve an additional haul, the traffic being carried by the Union Pacific from Salina to Beloit. The differences in distance to typical points east of Irving are shown in the following table, prepared by the complainants:

From Denver to—	Via Pueblo.	Via routing suggested by com- plainants.	Percent- age of differ- ence.
	<i>Miles.</i>	<i>Miles.</i>	<i>Per cent.</i>
Goff, Kans.....	847	845	85
Atchison, Kans.....	766	678	12
Virginia, Nebr.....	903	806	33
Falls City, Nebr.....	841	623	26

We are therefore of opinion and find that the routes via Pueblo are "unreasonably long" within the meaning of section 15 of the act. We further find that the Moffat road, the Burlington, and the Missouri Pacific should jointly establish through routes from the Oak Hills district to all the destinations involved in subcomplaint No. 1, and that joint rates on soft coal in carloads should be established not in excess of \$3.75 per net ton.

**SUBCOMPLAINT NO. 6. STATIONS IN KANSAS AND NEBRASKA ON THE
MISSOURI PACIFIC.**

In subcomplaint No. 6 complainants ask for the establishment of through routes and joint rates on the Walsenburg basis from the Oak Hills district to points on the Missouri Pacific in central and eastern Kansas, namely, between Geneseo and Kanopolis, between Geneseo and Wichita, between Geneseo and Kansas City, between Marquette and Gypsum City, between Topeka and Fort Scott, between Eldorado and McPherson, between Wichita and Fort Scott, between Osawatomie and Durand, and between Madison, Kans., and Worland, Mo.

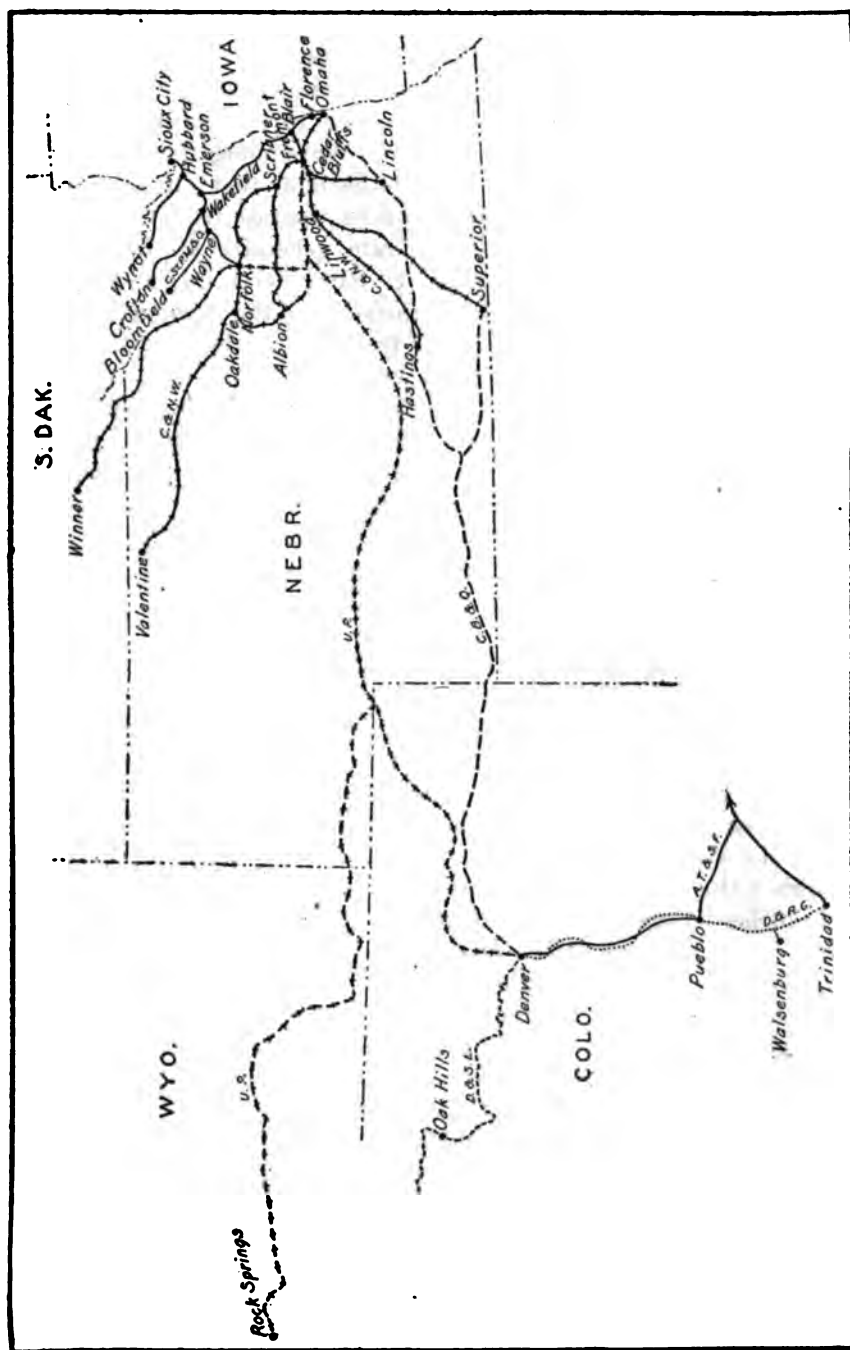
The complainants suggest that traffic consigned to Geneseo, Wichita, Fort Scott, Durand, Madison, and intermediate sections be routed Union Pacific to Kanopolis, thence Missouri Pacific to destinations; to stations on the McPherson branch, Union Pacific to McPherson, thence Missouri Pacific to destinations; and to stations on the main line east of Hallville, Union Pacific to Salina, thence Missouri Pacific to destinations.

The complainants have introduced little evidence in support of their allegations that through routes should be established to these destinations, and still less to sustain their contention that the rates

from Oak Hills should not exceed the rates from Walsenburg. The distances from Walsenburg are materially less than the distances from Oak Hills. To Wichita, a typical destination, the distance from Walsenburg is 528 miles, while the distance from Oak Hills via Kanopolis is 717 miles. Furthermore, the Missouri Pacific contends that the routes via Denver and Pueblo are not unreasonably long, and that since the Missouri Pacific and the Denver & Rio Grande are under a common ownership, the short-haul paragraph of section 15 of the act precludes the establishment of the through routes suggested by the complainant. Such evidence as appears of record seems to support this contention. The distance from Oak Hills to Wichita via the route selected by the complainant is 717 miles. The distance via Denver and Pueblo is 774 miles. Similarly, the distance to Gypsum City, Kans., is 681 miles by the complainants' route, and 732 miles via Denver and Pueblo. Even if the evidence warranted it, however, we are unable on the present record to establish through routes and joint rates via Denver and Pueblo, since the Denver & Rio Grande Railroad is not a party defendant. We therefore find that the complainants have not shown that through routes and joint rates should be established from Oak Hills to the destinations involved in this subcomplaint. This finding is without prejudice to the complainants to show upon a proper record that through routes and joint rates should be established from Oak Hills to these destinations via Denver and Pueblo.

SUBCOMPLAINT NO. 4. STATIONS IN NEBRASKA ON THE CHICAGO & NORTH WESTERN RAILWAY COMPANY.

In subcomplaint No. 4 complainants ask for through routes and joint rates from the complainants' mines to points on the Chicago & North Western, as follows: From Orin Junction, Wyo., to Crookston, Nebr., inclusive; to stations on the line extending north into South Dakota from Dakota Junction, Nebr., together with its branches to Crown Hill, Newell, and Hot Springs, S. Dak.; to stations on the three branches extending south from Fremont, Linwood, and Cedar Bluffs, Nebr., to Hastings, Superior, and Lincoln, Nebr. After the complaint was filed joint rates, satisfactory to the complainants, were established to all stations between Manville and Crookston, and to stations on the branch extending north from Dakota Junction. The evidence was therefore confined to the propriety of establishing through routes and joint rates to stations on the three branches south of Fremont. To these points complainants ask for rates of \$3.65 on slack and \$3.75 on all other kinds of coal. There is in effect at present a rate of \$4 on coal from the Walsenburg and the Rock Springs, Wyo., fields.



Stations in Nebraska on the C. & N. W. and the Omaha.

The complainants propose that traffic consigned to these destinations be routed via the Burlington to Hastings, Superior, or Lincoln.

Complainants, by exhibit, show that the average distance from Oak Hills to eight typical destinations on these three branches is 666 miles, while the average distance from Walsenburg to the same points is 727 miles. The complainants contend that although the rate from Walsenburg to these stations is \$4, the rate from Oak Hills should not exceed \$3.75, since that rate generally applies from Walsenburg to points in the Missouri River territory, and these stations all lie between the Oak Hills district and the Missouri River. The complainants further show that the rates on lump coal from Hudson, Wyo., to these destinations vary from \$3.33 to \$3.45, the average distance being 799 miles; and that the rate from Rock Springs, Wyo., to this territory is \$4, Rock Springs being at least 100 miles farther from the points of destination than Oak Hills. Furthermore, the Rock Springs rate also applies to these destinations from Kemmerer, 85 miles west of Rock Springs on the Oregon Short Line, and from Evanston, Wyo., 115 miles west of Rock Springs on the Union Pacific. Hence it is argued a rate of \$3.75 from Oak Hills is reasonable.

The Union Pacific, the Rock Island, and the Burlington, in connection with the Moffat road, have established rates from Oak Hills to this territory on the Missouri River basis of \$3.75 per net ton. This rate applies, for example, to stations on the Rock Island and the Burlington between Lincoln and Omaha, to stations on the Burlington between Lincoln and Columbus, Nebr., and to stations on the line of the Union Pacific which extends from Central City, Nebr., through Valparaiso to Omaha. The two lines last named intersect the branches of the Chicago & North Western involved in this complaint. Moreover, the routes proposed by the complainants appear to be satisfactory. That a three-line haul is involved rather than a two-line haul is immaterial in view of our discussion above.

We are of opinion and find that the Moffat road, the Burlington, and the Chicago & North Western should establish through routes from the Oak Hills district to the destinations involved in subcomplaint No. 4, and that they should publish joint rates applicable thereto not in excess of \$3.75 per net ton. The record does not show what should be the relationship between the rates on slack and pea coal and on other kinds of coal to these destinations. The tariffs show that the rate on slack and pea coal from Oak Hills to stations in the Missouri River territory is generally \$3.65 when the rate on other kinds is \$3.75. It would seem that the same relation should be maintained to stations on the Chicago & North Western, but we are

unable on the present record to make a finding to that effect. Our order will therefore require the establishment of a maximum rate of \$3.75 on all kinds of soft coal, in carloads, to these stations.

SUBCOMPLAINT NO. 5. STATIONS IN NEBRASKA ON THE CHICAGO & NORTH WESTERN RAILWAY COMPANY.

In subcomplaint No. 5 complainants ask for the establishment of through routes and joint rates, on the Rock Springs basis, from Oak Hills to stations on the Chicago & North Western, as follows: From Fremont, Nebr., to Valentine, Nebr., inclusive; to stations on the Winner branch extending from South Norfolk, Nebr., to Winner, S. Dak.; from Omaha to Fremont, inclusive; from Scribner, Nebr., to Oakdale, Nebr., inclusive, to points on the loop running through Albion, Nebr.; and from Fremont to Blair, Nebr. It is alleged that convenient through routes could be established via the Union Pacific to Fremont, Albion, and Norfolk, and thence via the Chicago & North Western to destinations indicated.

The following table, taken from one of the complainants' exhibits, shows the distances from Oak Hills and from Rock Springs to 10 typical destinations in this territory, and also the rates from Rock Springs, which the complainants ask to have established as maxima from Oak Hills:

Destinations.	Miles from Rock Springs.	Miles from Oak Hills.	Rock Springs rates proposed as rates from Oak Hills.
Long Pine, Nebr.....	902	852	\$4.55
O'Neill, Nebr.....	844	794	4.25
Oakdale, Nebr.....	799	749	4.00
Battle Creek, Nebr.....	780	730	4.00
West Point, Nebr.....	814	764	4.00
Scribner, Nebr.....	826	776	4.00
Blair, Nebr.....	787	737	4.00
Dallas, S. Dak.....	920	870	4.90
Niobrara, Nebr.....	832	782	4.15
Loretto, Nebr.....	761	711	4.00
Average.....	826	776	.....

This exhibit shows that the distances from Oak Hills are uniformly 50 miles less than from Rock Springs. The Rock Springs rates apply also from Kemmerer and Evanston, 85 miles and 115 miles more distant, respectively. The Chicago & North Western admits that it has no objection to a duplication of the Rock Springs rate to those destinations, provided the routing is the same as from Rock Springs and the North Western is allowed the same division as it gets from the Rock Springs rate.

The Burlington and the Union Pacific maintain a rate of \$3.75 from Oak Hills to points on their lines in the Missouri River territory, the average distance being 785 miles. The complainants in the present case seek rates varying from \$4 to \$4.90 for distances averaging 776 miles. The Union Pacific objects to establishing the proposed rates on the ground that if the Moffat road gets the division which it demands, and the North Western receives the division which it demands, there will not be enough left to afford the Union Pacific a reasonable compensation for its intermediate haul. The matter of divisions, however, is not in issue in this proceeding.

We are of opinion and find that the Moffat road, the Union Pacific, and the Chicago & North Western should establish through routes from the Oak Hills district to the destinations involved in subcomplaint No. 5, and that joint rates applicable thereto should be established not in excess of the rates to the same destinations from Rock Springs, Wyo., as shown in Union Pacific Railroad Company's tariff I. C. C. No. 2779 and supplements thereto.

SUBCOMPLAINTS NOS. 7 AND 8. STATIONS IN NEBRASKA ON THE CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY.

In subcomplaints Nos. 7 and 8 complainants ask for the establishment of through routes and joint rates from the Oak Hills district to stations on the Omaha road between Florence, Nebr., and Sioux City, Iowa, and also to stations on the line between Emerson and Norfolk, Nebr., with its branches to Bloomfield, Crofton, and Wynot, Nebr. The complainants ask that \$4 be fixed as a maximum rate to all these stations.

The complainants originally suggested that shipments consigned to stations between Florence and Sioux City could be routed via the Burlington to Hastings, thence by the North Western to Fremont and Blair, thence to destination by the Omaha. It was shown at the hearing, however, that this routing would short haul the Burlington, which reaches Omaha. The complainants admit that the latter road is entitled to haul the shipments as far as Omaha. The complainants propose that traffic consigned to the other stations on the Omaha be routed via the Union Pacific to Norfolk.

The suggested rate of \$4 was arbitrarily chosen by the complainants and is somewhat lower than other rates in the same general territory. To stations on the Burlington west of Sioux City, on the line extending to O'Neill, Nebr., the rate from Oak Hills is \$4.50. This branch of the Burlington crosses the Wynot, Crofton, and Bloomfield branches of the Omaha at Jackson, Laurel, and Randolph, Nebr. Moreover, the rates from Rock Springs, Wyo., to these desti-

nations are materially higher than the rate sought by the complainants. The following table gives the rates from Rock Springs to five typical points:

From Rock Springs, Wyo., to—	
Bloomfield, Nebr-----	\$4. 63
Crofton, Nebr-----	4. 70
Hartington, Nebr-----	4. 63
Randolph, Nebr-----	4. 43
Wayne, Nebr-----	4. 26

The complainants show that the rates from Hudson, Wyo., are lower than the rate sought. The distance from Hudson, however, is somewhat less than from Oak Hills, while the Hudson coal is admittedly inferior to that produced either in Routt county or in the Rock Springs district.

Upon consideration of all the evidence we are of opinion and find that the defendants, the Moffat road, the Burlington, and the Omaha, should establish through routes to these destinations from Oak Hills in accordance with this opinion, and should establish joint rates not in excess of the rates from Rock Springs, Wyo., to the same destinations, as shown in Union Pacific Railroad Company tariff I. C. C. No. 2779 and supplements thereto.

As above noted, the adoption of the particular routes found reasonable in the report will not be made mandatory, provided that over the roads designated the indicated destinations are reached by the through routes and on the prescribed joint rates from Oak Hills.

Appropriate orders will be entered.

39 I. C. C.

No. 7596.¹
DUFFNEY BRICK COMPANY ET AL.
v.
BOSTON & MAINE RAILROAD.

Submitted September 20, 1915. Decided April 28, 1916.

Increased local rates on brick from Mechanicville and Lansingburgh, N. Y., and from Gonic, N. H., to Boston, Mass., and adjacent territory found justified. Record held open to permit subsequent hearing as to joint rates on brick from Gonic to other territories which are alleged to be unreasonable and unjustly discriminatory.

James W. McNeill, John A. Henderson, Rankin Mason, and Howard J. Reilly for complainants.

W. A. Cole for Boston & Maine Railroad.

C. S. Thompson for Delaware & Hudson Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

By complaints filed between December 19, 1914, and February 27, 1915, defendants' rates on common and building brick in carloads from Mechanicville and Lansingburgh, N. Y., and Gonic, N. H., to trunk line and New England territories, and from Mechanicville and Lansingburgh to Montreal, Canada, are alleged to be unreasonable and unjustly discriminatory. Complaint against many of the rates assailed was abandoned at the hearing, and the only rates now involved are the local rates of the Boston & Maine Railroad from Mechanicville, Lansingburgh, and Gonic to Boston and vicinity, and joint rates from Gonic to New York, N. Y., Philadelphia, Pa., Baltimore, Md., and certain other points in eastern trunk line territory, and to points in New England on the Boston & Albany and the New York, New Haven & Hartford railroads. Reparation is asked.

Complainants in Nos. 7596 and 7696, hereinafter termed the New York complainants, and complainant in Nos. 7661 and 7786, hereinafter termed the New Hampshire complainant, are corporations engaged in the manufacture of brick at Mechanicville and Lansingburgh, and at Gonic, respectively.

Mechanicville is a common point on the Boston & Maine and the Delaware & Hudson roads, 187 miles west of Boston and 19 miles north of Albany. Lansingburgh is a local station on the Boston &

¹ The proceeding also embraces complaints in—No. 7696, Duffney Brick Company et al. v. Boston & Maine Railroad et al.; No. 7661, Boston Brick Company v. Boston & Maine Railroad et al.; and No. 7786, Same v. Boston & Maine Railroad et al.

Maine within the corporate limits of the city of Troy, N. Y., and is about 187 miles from Boston by way of the Boston & Maine. Gonic is also a local station on the Boston & Maine, 75 miles north of Boston.

LOCAL RATES OF THE BOSTON & MAINE.

By tariffs which became effective September 5, 1914, local distance commodity rates on brick, in carloads, were established and are now in effect between all points on the lines of the Boston & Maine. The rate from Mechanicville and Lansingburgh to Boston, 187 miles, is 6.3 cents per 100 pounds, or \$1.26 per net ton; that from Gonic to Boston, 75 miles, is 4.1 cents per 100 pounds, or 82 cents per net ton.

The rates in effect prior to September 5, 1914, hereinafter termed the former rates, were stated in cents per 1,000 brick. In the following tables a comparison is presented of the former and present local rates from Mechanicville, Lansingburgh, and Gonic to the principal destinations involved. The former rates per 1,000 brick have been reduced to a per net ton basis, using the current estimated weights per brick of the brick produced at each originating point:

	Distance.	Former rate.		Present rate per ton.	Increase.	Decrease.
		Per 1,000.	Equivalent per ton.			
From Mechanicville to —	<i>Miles.</i>				<i>Cents.</i>	<i>Cents.</i>
Boston, Mass.....	187	\$2.00	\$1.142	\$1.26	11.8	.....
Cambridge, Mass.....	184	2.00	1.142	1.26	11.8	.....
Lynn, Mass.....	196	2.25	1.285	1.30	1.5	.....
Lowell, Mass.....	167	2.25	1.285	1.18	.....	10.5
Waltham, Mass.....	177	2.00	1.142	1.22	7.8	.....
Concord, Mass.....	167	2.00	1.142	1.18	3.8	.....
Worcester, Mass.....	148	2.00	1.142	1.10	.....	4.2
Springfield, Mass.....	117	2.00	1.142	.98	.....	16.2
Fitchburg, Mass.....	137	2.00	1.142	1.06	.....	8.2
Holyoke, Mass.....	109	1.80	1.028	.94	.....	8.8
From Lansingburgh to —						
Boston, Mass.....	187	2.00	1.016	1.26	24.4	.....
Cambridge, Mass.....	184	2.00	1.016	1.26	24.4	.....
Lynn, Mass.....	196	2.25	1.142	1.30	15.8	.....
Lowell, Mass.....	167	2.25	1.142	1.18	3.8	.....
Waltham, Mass.....	177	2.00	1.016	1.22	20.4	.....
Concord, Mass.....	167	2.00	1.016	1.18	16.4	.....
Worcester, Mass.....	148	2.00	1.016	1.10	8.4	.....
Springfield, Mass.....	117	2.00	1.016	.95	.....	3.6
Fitchburg, Mass.....	137	2.00	1.016	1.06	4.4	.....
Holyoke, Mass.....	109	1.80	.914	.94	2.6	.....
From Gonic to —						
Boston, Mass.....	75	{ S 1.60	.64	.82	18.0	.....
		{ W 1.80	.80	.82	2.0	.....
East Cambridge, Mass.....	75	{ S 1.60	.64	.82	18.0	.....
		{ W 1.80	.80	.82	2.0	.....
Lynn, Mass.....	64	{ C 1.80	.758	.78	2.2	.....
		{ S 1.60	.64	.78	14.0	.....
Lowell, Mass.....	62	{ W 1.60	.71	.78	7.0	.....
Waltham, Mass.....	78	{ C 2.00	.842	.86	1.8	.....
		{ S 1.60	.64	.92	28.0	.....
Worcester, Mass.....	96	{ W 1.80	.80	.92	12.0	.....
		{ C 2.00	.842	.76	.....	8.2
Lawrence, Mass.....	49	{ S 1.60	.64	.76	12	.....
Salem, Mass.....	60	{ C 1.80	.758	.78	2.2	.....

¹ Estimated weight, 3½ pounds per brick.

² Estimated weight, 3¼ pounds per brick.

³ Estimated weights: Sand-struck brick (S), 5 pounds per brick; water-struck brick (W), 4½ pounds per brick; common brick (C), 4½ pounds per brick.

Because of the heavier weight of the brick manufactured at Lansingburgh and Gonic the establishment of rates on a weight basis effected greater increases in the rates from those points than from Mechanicville, but no serious objection to that method of stating rates was offered. The present rates to some points are lower, but to the principal points of destination they are higher than the rates formerly in effect. Before the present rates were established the greater part of the New York complainants' shipments moved to Boston, but a considerable portion of their output was disposed of at Lynn, Lowell, Lawrence, and other cities in that vicinity. Their principal competitors, located at Cohoes, Troy, and Newton Hook, N. Y., ship over the New York Central lines to Boston. When these cases were heard the rate of the New York Central from Cohoes to Boston, a distance of 211 miles, was \$1.05 per ton, and from Newton Hook to Boston, a distance of 220 miles, \$1.16 per ton. There was also in effect from Mechanicville and Lansingburgh to Boston a joint rate of \$2 per 1,000 brick by way of the Boston & Maine to North Adams, Mass., and the Boston & Albany beyond, a distance of 212 miles. It is stated that this joint rate was continued in effect after the Boston & Maine had increased its local rates in order to allow complainants and others to complete shipments under contracts previously entered into. Effective April 10, 1916, rates from Cohoes, Newton Hook, and Troy to Boston by way of the New York Central lines, and effective April 20, 1916, rates from Lansingburgh and Mechanicville to Boston over the North Adams route, were increased to \$1.26 per ton, thus removing the disparities which existed when the complaints were filed.

The New York complainants assert that under the present adjustment of rates they can not compete successfully in the Boston market with brick-manufacturing plants located at less distant points on the Boston & Maine and ask that the former rate of approximately \$1 per net ton be reestablished. One of the Mechanicville plants has ceased operating because of the increased rates, it is said, but complainants admit that the general business depression probably would have caused the plant to be operated at half capacity if the rates had not been increased.

The New Hampshire complainant contends that the present rates are unreasonable, but complains more especially because lower rates are maintained from Epping to Boston and vicinity than from Gonic to the same destinations. Under the former adjustment rates from Gonic were in most instances the same as from Epping. The distance from Epping to nearly all Massachusetts points is about 19 miles less than from Gonic, and the establishment of distance

rates has given to Epping an advantage because of its lesser distances to the consuming markets.

A comparison of the distances and present rates on brick from Gonic and Epping, N. H., to the principal Massachusetts markets is shown in the following table:

To—	From Gonic.		From Epping.	
	Miles.	Rate per ton.	Miles.	Rate per ton.
		<i>Cents.</i>		<i>Cents.</i>
Boston, Mass.....	75	82	56	78
East Cambridge, Mass.....	75	82	56	78
Lynn, Mass.....	64	78	55	76
Lowell, Mass.....	62	78	41	72
Lawrence, Mass.....	49	76	30	66
Salem, Mass.....	60	78	51	76
Marblehead, Mass.....	64	78	55	76
Chelsea, Mass.....	71	82	61	78
Waltham, Mass.....	78	86	59	78
Worcester, Mass.....	96	92	74	82

The New Hampshire complainant manufactures two kinds of building brick, known as "sand-struck" brick and "water-struck" brick, the latter being the more valuable. Under the former tariffs a difference was made between the rates on the two kinds of brick to certain destinations, but under the present tariffs the rates are equal. A witness for this complainant testified that rates on water-struck brick as a whole had been reduced about 5 per cent, while those on sand-struck brick had been increased about 30 per cent.

Little evidence was offered as to the reasonableness *per se* of the present rates. The following table, excerpted from an exhibit introduced by defendants, shows the extent of the increases as applied to the entire local brick traffic of the Boston & Maine for the calendar year 1912, which, so far as the record discloses, was a representative year:

From—	Tons.	Revenue.	Revenue increase.	Percentage increase.
Lansingburgh.....	3,280	\$3,190	\$382	12.0
Mechanicville.....	35,831	38,114	2,484	6.5
Gonic.....	27,338	24,648	40	.2
Epping.....	47,222	37,507	279	.8
All stations.....	180,680	151,866	5,747	3.8

Complainants' witness contrasted the present rates to Boston, which yield 6.7 mills per ton-mile from Mechanicville and Lansingburgh and 10.9 mills per ton-mile from Gonic, with rates on brick of \$2 per 1,000 brick for a distance of 200 miles effective intrastate in 39 I. C. C.

Tennessee and a rate of \$20 per car of 40,000 pounds for a distance of 200 miles effective intrastate in Georgia. Such comparisons are of little value when, as in this case, it is not shown that the circumstances and conditions surrounding the traffic are substantially similar.

The attack upon the present rates is based in part upon the proposition that the location of complainants' plants was induced by the establishment of the lower former rates and by the representation by the Boston & Maine that such rates would not be increased. This, however, is not a controlling factor. It is well settled that an increase in rates which are unreasonably low is not precluded by the fact that investments were made in the expectation that such rates would be continued in effect. *Chattanooga Log Rates*, 30 I. C. C., 36; *Crawford & Bunce v. P., C., C. & St. L. Ry. Co.*, 32 I. C. C., 12.

The present local rates of the Boston & Maine were established in connection with a general readjustment of its class and commodity rates, which is still in progress. In *Rates on Cotton Piece Goods*, 34 I. C. C., 41, some of the circumstances leading to the readjustment were stated as follows:

Some time prior to the filing of the suspended tariffs the Boston & Maine Railroad experienced financial difficulties that rendered necessary an increase in its revenue. The rates then in effect, moreover, involved a number of inconsistencies and discriminatory features which called for correction. In an effort to devise means to remedy the situation the railroad commissions of Massachusetts, Vermont, New Hampshire, and Maine held a number of informal hearings and conferences for the purpose of determining to what extent the Boston & Maine should be allowed to increase its rates. As a result of these joint conferences, the Boston & Maine was authorized to increase its local rates, both class and commodity.

The present rates on brick were formally approved by the New Hampshire commission and apply on intrastate traffic within the states traversed by the Boston & Maine as well as on interstate traffic. One of the reasons for the readjustment of rates on brick was the removal of discriminations formerly existing. As illustrative of the former discriminatory conditions defendants show that on various portions of the lines of the Boston & Maine, for distances of about 75 miles, there were eight different rates in effect, ranging from 60 cents to \$1.30 per ton; and that for distances of about 190 miles there were four different rates ranging from \$1 to \$1.50 per ton. Those inequalities were the subject of much complaint. The establishment of a scale of distance commodity rates has eliminated such inconsistencies and the adoption of weight as a basis for the assessment of transportation charges has removed a fruitful source of inequality.

We find that the present local rates of the Boston & Maine on brick here assailed are not shown to be unreasonable or unjustly discriminatory, and that the increases in those rates have been justified.

JOINT RATES FROM GONIC.

As shown in the following table the joint rates of the Boston & Maine and connecting lines from Gonic to points on the Boston & Albany and the New York, New Haven & Hartford are considerably higher than the present local rates of the Boston & Maine for equal distances:

B. & A. stations.	Miles.	Rate.	B. & M. scale.	N. Y., N. H. & H. stations.	Miles.	Rate.	B. & M. scale
From Gonic, N. H., to—				From Gonic, N. H., to—			
Brookline, Mass.....	81	\$1.39	\$0.86	Hyde Park, Mass.....	86	\$1.85	\$0.90
Newton, Mass.....	83	1.39	.86	Walpole, Mass.....	94	1.65	.90
Auburndale, Mass.....	86	1.39	.90	Mansfield, Mass.....	99	1.65	.92
Wellesley, Mass.....	90	1.39	.90	Providence, R. I.....	118	1.65	.98
South Framingham, Mass.....	97	1.39	.92	New Bedford, Mass....	127	1.90	1.02
Holliston, Mass.....	103	1.49½	.94	New London, Conn....	181	1.85	1.26
Milford, Mass.....	109	1.49½	.94	Meriden, Conn.....	203	1.75	1.34

Defendants' representatives did not attempt to justify these joint rates and stated that reasonable and nondiscriminatory joint rates to points on these lines would be established as soon as possible.

Defendants have filed a tariff effective April 20, 1916, increasing the rates from Gonic to points on the Boston & Albany. By this new tariff it is proposed to establish a rate of \$1.77½ per net ton to Holliston and Milford and a rate of \$1.65 per net ton to the other points on the Boston & Albany named in the above table. These increased rates have been suspended pending investigation. *Brick from New Hampshire Stations*, Investigation and Suspension Docket No. 828.

On account of their peculiar qualities water-struck brick are subject to special demand. Their movement is not affected by freight rates to the same extent as is the movement of ordinary brick, and therefore they are shipped to greater distances. The New Hampshire complainant has shipped water-struck brick in large quantities to New York and to some extent to points beyond, such as Philadelphia and Washington. Shipments also have been made to Chicago and Omaha. Its brick come into competition with brick from Pittsburgh and Bradford, Pa., Olean, N. Y., and other places. Brick from western Pennsylvania are sometimes marketed in Boston. The Pennsylvania competitors are able to manufacture at less cost than this complainant, as their shale and coal are produced in the same locality. Complainant's business to New York has fallen off 70

per cent. This loss, however, is not attributed solely to differences in freight rates, but is said to be due in part to general commercial conditions. The following table, compiled from an exhibit introduced by this complainant, shows the distances and present rates from Gonic and Pittsburgh to points in eastern trunk line territory involved in the complaint:

To—	From Gonic, N. H.			From Pittsburgh, Pa.		
	Miles.	Rate per ton.	Revenue per ton-mile.	Miles.	Rate per ton.	Revenue per ton-mile.
			<i>Miles.</i>			<i>Miles.</i>
Jersey City, N. J.	291	\$2.42	8.3	443	\$2.66	6.0
New York, N. Y.	292	2.15	7.4	444	2.66	6.0
Brooklyn, N. Y.	292	2.55	8.7	444	2.66	6.0
Newark, N. J.	302	1 3.16	10.5	431	2.66	6.2
Elizabeth, N. J.	308	1 3.16	10.3	426	2.66	6.2
Trenton, N. J.	351	1 3.16	9.0	383	2.66	6.0
Philadelphia, Pa.	384	2.84	7.4	349	2.26	6.5
Wilmington, Del.	411	1 3.16	7.7	376	2.26	6.0
Baltimore, Md.	480	3.26	6.8	334	2.06	6.1
Washington, D. C.	520	3.88	7.5	294	2.06	7.0

¹ Sixth class.

Of the rates from Gonic named in the above table those to New York, Jersey City, Brooklyn, Philadelphia, Baltimore, and Washington are commodity rates. The others are sixth class, which is the basis prescribed by the official classification. Defendants maintain that, considering the kind of brick shipped by the New Hampshire complainant, the sixth-class basis where applicable is a proper one, but say that they are willing, as far as they consistently can, to establish rates which will enable this complainant to compete in those markets.

Complainant asks that joint rates be established which are no higher per ton-mile than the rates from Pittsburgh and other competing points. The distances from the competing points named are greater and the haul is usually over one line, while the haul from Gonic to the same destinations is over two or more lines. It is a well-established principle of rate making that ton-mile earnings properly may decrease as the length of the haul increases, and that ordinarily rates for a one-line haul may be lower than for movements over two or more lines. At the opening of the hearing defendants' representatives stated that they had not been advised as to the particular points to which complainants desired that lower joint rates should be established, and that the work of revision would be greatly lessened and facilitated if more specific information were furnished. Complainant's witness admitted that previously to the filing of the complaint no request had been made for lower rates to eastern trunk line points.

39 I. C. C.

With respect to the joint rates complained of the evidence is not sufficiently clear and definite to enable us to determine upon the present record what rates should be established in lieu of those which may be unreasonable or unjustly discriminatory.

The complaints will be dismissed as to the local rates of the Boston & Maine, and further hearing on the joint rates complained of will be consolidated with hearing under the suspension order in Investigation and Suspension Docket No. 826.

No. 8086.

NONA MILLS COMPANY, LIMITED,

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL

Submitted December 16, 1915. Decided April 28, 1916.

Joint rates on lumber from Leesville, La., by way of the Kansas City Southern Railway and the Gulf, Colorado & Santa Fe Railway, to points on the lines of the Santa Fe system, in the states of Texas and Oklahoma, found to be unjustly discriminatory to the extent that they exceed the rates contemporaneously maintained from points on the lines of the Gulf, Colorado & Santa Fe, in Louisiana, to the same points.

J. M. Simmons for complainant.

J. S. Hershey, Robert Dunlap, T. J. Norton, and F. E. Andrews for Santa Fe system lines.

J. M. Souby for Kansas City Southern and Texarkana & Fort Smith railway companies.

G. F. Thomas for certain applicants to intervene.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant is a corporation engaged in the manufacture of lumber at Leesville, La. It attacks as unreasonable and unjustly discriminatory defendants' rates for the transportation of yellow-pine lumber in carloads from Leesville to nearly all points in the states of Texas, Oklahoma, New Mexico, Colorado, Kansas, Nebraska, and Missouri on the Gulf, Colorado & Santa Fe Railway, Panhandle

& Santa Fe Railway, and the Atchison, Topeka & Santa Fe Railway, hereinafter referred to collectively as the Santa Fe. The Commission is asked to establish joint rates that do not exceed the rates contemporaneously in effect to the same destinations from Santa Fe points in Louisiana.

Applications to intervene were made in behalf of certain tap lines and shippers of lumber from points in Louisiana, Arkansas, and Texas on the lines of the Chicago, Rock Island & Pacific Railway, but the applications were denied because the issues were different from those presented in the complaint.

Leesville is on the Kansas City Southern Railway 20 miles north of De Ridder, La., and 98 miles north of Beaumont, Tex. The Santa Fe connects with the Kansas City Southern at De Ridder, and with the Texarkana & Fort Smith Railway, a subsidiary of the Kansas City Southern, at Beaumont. The Santa Fe points of origin involved are in Louisiana on a branch line of the Gulf, Colorado & Santa Fe which extends from Kirbyville, Tex., for a distance of 80 miles through De Ridder to Oakdale, La. They comprise a single rate group which for convenience will be referred to hereinafter as the Oakdale group. Blanket rates apply from all points in this group to large groups of destination points in Texas and Oklahoma. All rates named herein apply on yellow-pine lumber in carloads and are stated in cents per 100 pounds.

When the complaint was filed there were no joint rates in effect from Leesville to interstate points on the Santa Fe. Subsequently joint rates were established and are now in effect. The present rates from Leesville to points in Kansas, Colorado, Nebraska, Missouri, and certain portions of Oklahoma are the same as the rates from the Oakdale group. They exceed the rates from the Oakdale group by from $3\frac{1}{2}$ to $5\frac{1}{2}$ cents to points in central and western Oklahoma, 3 cents to points in Texas, and 5 cents to points in the Pecos Valley of New Mexico. The first group of destination points in Texas extends westward from the Louisiana state line to a line drawn from Sherman on the north through Dallas, Waco, Cameron, La Grange, and Edna to Port Lavaca on the south. To all points in this group the rate from the Oakdale group is $17\frac{1}{2}$ cents. West of this group the rates are graded upward from group to group until a maximum of 25 cents is reached. These group rates are the maximum rates prescribed by the state commission of Texas on intrastate traffic and they are applied from producing points in Louisiana to consuming points in Texas by the Santa Fe and all other lines serving that territory. To the various groups of destinations in Oklahoma rates are graded upward from a 23-cent rate group in the eastern section of the state to a 32-cent rate group in the northwestern section.

At the hearing complainant withdrew its request for joint rates to points in New Mexico, and no evidence was offered with respect thereto. Complainant does not ask that rates shall be made the same from Leesville as from Santa Fe points to Port Bolivar and Galveston, Tex., for export and coastwise movement and to points in the vicinity of Houston, Tex., and east of Somerville, Tex., which are on a mileage basis. Neither does the complaint attack rates to points on the branch of the Santa Fe extending from Owen to Tulsa, Okla., as the rates to such points are the same from Leesville as from points in the Oakdale group. *Lumber Rates from Texas, Louisiana, and Arkansas*, 28 I. C. C., 471. It was agreed that the only question to be determined is whether the rates from Leesville to the Texas and Oklahoma groups which, as stated, are 3 cents higher to Texas and from $3\frac{1}{2}$ to $5\frac{1}{2}$ cents higher to Oklahoma than from the Oakdale group, are reasonable and nondiscriminatory.

The lumber manufactured at complainant's Leesville mill, which has a daily capacity of 150,000 feet, is of the variety known as long-leaf yellow pine. This kind of lumber is of great tensile strength, and is said to be especially valuable for structural purposes. In recent years the market for Louisiana yellow-pine lumber in the states of North Dakota, South Dakota, Kansas, and Nebraska has been greatly diminished by the increased use of lumber from the Pacific coast and it has become necessary for the Louisiana producers to find markets in near-by territory. Complainant sells its lumber in competition with that produced by all other mills operating in what is known as the southwestern yellow-pine blanket, and except to points on the Santa Fe in Texas, Oklahoma, and New Mexico, is accorded the same rates as its competitors in the Oakdale group. It is shown that under the present adjustment of rates from Leesville to local points on the Santa Fe in Texas and Oklahoma complainant is unable to sell its lumber in competition with the lumber produced by the mills in the Oakdale group.

But little evidence was introduced respecting the reasonableness *per se* of the rates assailed. The Santa Fe contends that rates to Texas points from mills on its line in Louisiana are unduly low inasmuch as they are the same as the maximum group rates from Beaumont and Orange, Tex., prescribed by the state commission of Texas. Lumber is rated class D in the Texas classification and mileage rates applicable to that class are observed on Texas intrastate traffic until a rate of 15 cents is reached. Where the mileage rate exceeds 15 cents an adjustment is applied to class D which results in the groups heretofore described. It was conceded, however, that the lumber rates to Texas are "fairly good rates" and that the rates on many other commodities are less remunerative than the rates on lumber. The follo

ing table compiled from an exhibit introduced by complainant shows the number of Santa Fe stations in each Texas group at which lumber yards doing a considerable volume of business are located, and the distances, rates, and ton-mile earnings, from Leesville, as compared with the Oakdale group. The group rates named are the present rates from the Oakdale group and also are the rates asked from Leesville.

Rate group, cents.	Number of Santa Fe stations.	Average distances from Leesville and ton-mile earnings under the rates asked.				Average distances and ton-mile earnings from the Oakdale group.	
		Via De Ridder.		Via Beaumont.			
		Miles.	Mills.	Miles.	Mills.	Miles.	Mills.
17½	23	408	8.57	436	8.02	360	9.72
18½	45	407	9.21	435	8.62	359	10.4
20	11	484	8.26	512	7.81	436	9.17
21½	10	567	7.49	595	7.14	519	8.19
22½	16	749	6.0	777	5.79	701	6.41
23½	6	809	5.74	837	5.67	761	6.11
24	1	928	5.17	964	5.03	878	5.46

A representative of the Santa Fe testified that while the rates from the Oakdale group to Santa Fe points in Oklahoma are generally regarded as reasonable for the one-line hauls involved, they are believed to be too low to apply from Leesville or other points on connecting lines. In support of its contention that the present rates between points on its lines would be less than reasonable if applied from Leesville or other Louisiana points on connecting lines the Santa Fe cited the rate of 24 cents to Perry, Okla., and the rate of 25 cents to Cherokee, Okla., from De Ridder, a point in the Oakdale group. These rates yield 6.88 mills per ton-mile to Perry, 697 miles, and 6.55 mills to Cherokee, 763 miles. If they were applied from Leesville and the Kansas City Southern were allowed its present division of the joint rates, the Santa Fe would earn for its hauls from De Ridder 5.45 mills per ton-mile to Perry and 5.23 mills per ton-mile to Cherokee. The record does not disclose the average distances and ton-mile revenues from Louisiana to representative points in the various Oklahoma groups.

Rates to Texas and Oklahoma points from equidistant Louisiana points on all trunk lines connecting with the Santa Fe are the same as the rates applying from Leesville in connection with the Kansas City Southern, and hence the Santa Fe does not discriminate as between connecting trunk lines. From points on certain connecting tap lines, however, the rates are the same as from the Oakdale group. *The Tap Line Case*, 23 I. C. C., 549. It is also shown that the Santa

Fe maintains rates from the Oakdale group to points on connecting trunk lines in Texas and Oklahoma which are no higher than the rates contemporaneously maintained to local points on its lines in the same rate groups and that the divisions paid to connecting lines on such traffic equal or exceed the divisions accruing to the Kansas City Southern out of the joint rates from Leesville. The Santa Fe's policy of maintaining rates from the Oakdale group to points on connecting lines in Texas and Oklahoma which do not exceed the rates contemporaneously in effect to its local points in the same rate groups was illustrated by its witness as follows:

For instance, we undertake to put the mills located at Oakdale and De Ridder on just as good a basis, just as good a rate to the San Antonio & Aransas Pass (Railway) as from points on the Southern Pacific to points on the San Antonio & Aransas Pass.

It appears further that all lines which extend from the lumber-producing section of Louisiana to Texas and Oklahoma except the Santa Fe apply the same rates from points on connecting trunk lines as from their local stations in the same rate group.

The Santa Fe asserts that the rate situation complained of is justified because it is able to supply its consuming territory from mills on its own line, and that by reason of its large investments in both the consuming and producing territory and the one-line hauls it is entitled to maintain lower rates from points on its line than from points on the Kansas City Southern or other connecting trunk lines. It is urged that if rates from Leesville are reduced corresponding reductions necessarily will follow from a large producing territory served by the Kansas City Southern and other connecting trunk lines.

The position taken by the Santa Fe in this case is similar to that which it has assumed in other cases.

In *Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co.*, 14 I. C. C., 364, the right of the Santa Fe to cancel its joint through rates on lumber from points on the lines of connecting carriers in the same general territory here considered was denied. The conclusion in that case was that the Santa Fe was not justified in restricting the producing markets in which buyers might secure their lumber. In our report, at page 367, it was said:

Both the dealers and the mills may properly look to the carriers serving those points of origin and destination to provide the facilities and to establish through routes and fair and reasonable rates for the movement.

In *Lumber Rates from Texas, Louisiana, and Arkansas, supra*, the Santa Fe sought to increase rates on lumber from points of production in Texas, Louisiana, and Arkansas, received from connecting lines, to points in Oklahoma and Missouri. The contentions made in 39 I. C. C.

that case were similar to those urged in the instant case, and at page 474 we said:

The broad fundamental question involved in this case is whether the Santa Fe should be permitted to retain for itself the lumber market at points on its line for the benefit of producing points on its line to the exclusion of all others, except under a penalty of 3½ cents per 100 pounds. We think this is an exercise of a carrier's rate-making power far too arbitrary and selfish to be permitted under the act. As a matter of sound policy under the law, a carrier is not justified in attempting to restrict its traffic to movement between points on its own line. Through rates are published from lumber-producing points on the Santa Fe to points of consumption on other lines allowing free movement at competitive rates; and, similarly, the Santa Fe should maintain competitive rates from connecting lines wherever it is possible to do so without loss.

At the hearing, on brief, and in argument the Santa Fe refers to and relies upon *Corporation Commission of New Mexico v. Ry. Co.*, 34 I. C. C., 292, to sustain its contention that it is justified in maintaining higher rates on lumber coming from producing points on connecting lines than it maintains from mills on its own lines to points in consuming territory. In the case cited we reduced the rates from producing points in Texas, Louisiana, and Arkansas to points in the Pecos Valley, N. Mex., and at page 313 said:

We do not feel warranted upon this record in disturbing the present relation of rates between producing points in Texas, Louisiana, and Arkansas, or between producing points on the line of the Santa Fe and its connections.

In that case the differential basis was found to be in effect. The record contained no warrant to disturb it. Nothing said in that case justifies the assumption by the Santa Fe that the rate adjustment here complained of was sanctioned by the Commission. Rates on lumber from Santa Fe producing points in Louisiana to points in Texas and Oklahoma are not shown to be on an unduly low basis, and the practice of the Santa Fe in so publishing its rates that lumber from Leesville may reach markets on its lines in Texas and Oklahoma only under a rate handicap of from 3 to 5½ cents per 100 pounds has not been justified.

Upon all of the facts of record we are of opinion, and find, that the present rates for the transportation of yellow-pine lumber in carloads from Leesville to the points involved in Texas and Oklahoma on the lines of the Santa Fe system are unjustly discriminatory to the extent that they exceed the rates in effect from points on the Santa Fe system in Louisiana in the Oakdale group to the same points. For the future we will require that the Kansas City Southern and Santa Fe maintain joint rates from Leesville to said points in Texas and Oklahoma no higher than the Santa Fe contemporaneously maintains from mills in Louisiana in the Oakdale group to the same points.

The Chicago, Rock Island & Pacific Railway Company, Fort Smith & Western Railroad Company, Midland Valley Railroad Company, Missouri, Kansas & Texas Railway Company, and the Missouri, Kansas & Texas Railway Company of Texas are named as defendants. In their joint answer to the complaint, the Kansas City Southern and Texarkana & Fort Smith assert their willingness to establish joint rates on the basis prayed for by complainant, but express objections to the establishment of such joint rates in connection with intermediate carriers, inasmuch as there exist direct connections between their lines and those of the Santa Fe. No evidence was introduced with respect to rates in connection with the intermediate carriers, and there appears to be no reason why they should be included in the order for the maintenance of rates for the future.

An order will be entered accordingly.

89 I. C. C.

No. 6592.
IN THE MATTER OF IMPORT AND DOMESTIC RATES.
CLAY.

Submitted April 10, 1916. Decided April 27, 1916.

Because of informal complaints filed with the Commission to determine the propriety of the import rates on English clay from Gulf ports and north Atlantic ports to points in central freight association territory which were lower than the domestic rates on clay mined in the state of Georgia to the same destinations, a hearing was had under a general order of the Commission which provides for an investigation into the rates, practices, rules, and regulations governing the transportation of imported property and the relationship between the rates for such transportation and for transportation of similar property originating in the United States; *Held*, That the present adjustment has not been shown to be unjustly discriminatory against domestic traffic.

B. Gilham, Roy R. Ross, D. R. Edgar, and N. C. Bowden for complainants.

R. Walton Moore, M. P. Callaway, and Willis H. Fowle for southern carriers.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

This proceeding is under a general order of the Commission of February 10, 1914, providing for an investigation into the rates, practices, rules, and regulations governing the transportation of property imported from foreign countries from ports of transshipment to interior points in the United States, and into the relationship existing between the rates for such transportation of imported property and the rates for transportation of similar property originating in the United States and moving under domestic rates.

Informal complaints were filed with the Commission alleging that the import rates on clay through north Atlantic ports and Gulf ports to points in central freight association territory and St. Louis Mo., are discriminatory against domestic clay mined in the state of Georgia and producers thereof who ship their product to the same destinations on higher domestic rates. Because of these complaints a hearing was had under our general order regarding the relationship between the import and domestic rates on clay from north

Atlantic ports and Gulf ports to points in central freight association territory and St. Louis, and the relationship between the import rates on this commodity from these ports and the domestic rates from producing points in Georgia. It appears that the movement to St. Louis is negligible. Only the destinations in central freight association territory, therefore, need be considered.

The ones who filed the informal complaints are operators of clay mines or pits, or dealers in clay, located in the vicinity of Macon, Ga., principally on the lines of the Central of Georgia Railway and Macon, Dublin & Savannah Railroad, and for convenience they are hereinafter referred to as the operators. Carriers made parties hereto are certain of those operating from north Atlantic ports and Gulf ports; those originating the traffic at the points complained of, and their connections to the Ohio River; and certain lines in central freight association territory that are parties to both the import and domestic rates from north Atlantic ports and Gulf ports and likewise participate in the domestic rates from Georgia producing points.

The operators do not urge that the rates on their domestic clay are unreasonable *per se*. The only issue for determination, therefore, is whether the rates on domestic clay from Georgia producing points to central freight association territory unjustly discriminate against complainants and this commodity because of the maintenance of lower rates on imported clay from north Atlantic ports and Gulf ports to these same destinations.

The table below shows the import and domestic rates in cents per 100 pounds, the distances, from New York, N. Y., Philadelphia, Pa., New Orleans, La., and the average distances from the Georgia producing points, to certain markets in central freight association territory:

To—	From New York.			From Philadelphia.			From New Orleans.			From Georgia points.	
	Dis- tance.	Do- mestic.	Im- port.	Dis- tance.	Do- mestic.	Im- port.	Dis- tance.	Do- mestic.	Im- port.	Dis- tance.	Do- mestic.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Steubenville, Ohio.....	487	14.7	14.7	396	12.7	12.7	1,118	41.0	41.0	892	23.5
East Liverpool, Ohio...	488	14.7	14.7	397	12.7	12.7	1,142	41.0	41.0	916	23.5
Cincinnati, Ohio.....	757	18.3	15.0	666	16.3	13.0	835	28.0	9.0	609	15.0
Cleveland, Ohio.....	584	16.8	14.7	493	14.8	12.7	1,098	41.0	41.0	872	21.1
Dayton, Ohio.....	708	17.6	14.7	617	15.6	12.7	891	39.0	39.0	665	17.2
Indianapolis, Ind.....	825	19.5	16.0	734	17.5	14.0	888	31.0	10.0	720	18.0
South Bend, Ind.....	851	20.2	16.1	772	18.2	14.1	998	41.0	41.0	861	20.7
Chicago, Ill.....	912	21.0	17.0	821	19.0	15.0	912	31.0	11.0	866	20.7
Detroit, Mich.....	693	16.8	14.7	669	14.8	12.7	1,106	41.0	41.0	880	21.4
Kalamazoo, Mich.....	837	20.2	16.1	749	18.2	14.1	1,053	41.0	41.0	933	21.7

The Georgia mines are grouped and take the same rate to any given point in central freight association territory. The rates are published in dollars and cents per net ton; those from north Atlantic 89 I. C. C.

ports and Gulf ports are published in cents per 100 pounds. For the purpose of comparison, however, the rates from Georgia producing points are shown in cents per 100 pounds. The domestic and import rates from north Atlantic ports are commodity rates which are lower than the sixth-class rates. The domestic rates from Gulf ports and the import rates to points east of the Chicago-Indianapolis line are class rates on which it does not appear that there is any movement. West of this territory the import rates from Gulf ports are commodity rates. It was agreed at the hearing that the operators' mines are located an average distance of about 30 miles from Macon. The distances shown above from Georgia producing points therefore are based upon that distance over Macon.

Georgia clay is used in the paper industry and in the manufacture of ceramic and sanitary ware. In addition to central freight association territory the operators market their product in the eastern and New England states. The imported clay is mined in England and is used for substantially the same purposes as the domestic clay. English clay is of varying grades, of which some are of a lower quality than that produced in Georgia and others much superior. Georgia clay is shipped in box cars in bulk, or in sacks, and is sold through brokers at prices f. o. b. the mines. Its average value is between \$5.50 and \$6 per ton. The clay shipped in sacks is the better quality and is used principally in the paper industry. Bulk clay is used primarily in the manufacture of pottery. English clay is sold in this country at a delivered price through brokers or importers who directly represent the foreign interests. The operators were uninformed as to its exact selling price.

The development of the Georgia clay fields began approximately 15 years ago. From the outset Georgia producers have encountered numerous difficulties, other than freight rates, in attempting to supplant the English clay in American markets, of which the principal are: (1) English clay has long been recognized as the standard product of its kind in the world. When the domestic industry in Georgia was in its infancy, manufacturers accustomed to the use of English clay had already located in central freight association territory and in the New England states and were using only imported clay. Their factories were also equipped with machinery especially adapted for working this clay, and this condition exists to a great extent to-day. (2) Color is an essential element for good clay, particularly in the paper industry. English clay, of the better quality, is much whiter than Georgia clay and for this reason is preferred. The imported clay is also of a fragile, brittle structure, that is not plastic. Georgia clay is tough and the application to it of water makes a stiff mud. The manufacturers have to overcome this difficulty by a thorough beating process. It is asserted that

domestic clay requires five times as much beating as does the imported article in order to put it in proper slip form. (3) A number of the managers and superintendents of potteries, tile works, and paper mills in the territory under consideration are accustomed to the use of English clay and favor its use. The operators say that this prejudice is a serious obstacle to attempts to introduce the domestic clay. One of the operators' witnesses admitted that they would still have these difficulties to surmount if the domestic and import rates were the same.

It is asserted that the cost of mining clay in England is somewhat less than in Georgia, but no figures or definite evidence on this point were introduced. The operators deny that English clay is in any way superior to their product, except in color, and assert that if the transportation costs were the same there would be no difference in the value of the two commodities at the point of consumption. They admit that their business is increasing and that every year they are securing new customers who have never before used any but the English clay. It is stated that 60 per cent of the output of Georgia clay has supplanted imported clay. The total output, from year to year, of their operations as a whole has not been shown. The operators say that the prejudice against their product can be overcome by its increased use, but that to introduce it into industries formerly using only English clay it has been necessary to make sacrifices, in the nature of quoting prices lower than those on the imported article; that in time their product will largely, if not entirely, supplant the English clay, but that for the present they have enough natural obstacles to overcome without the carriers giving them more, and that in order to surmount them it is necessary that they have all possible assistance as to rates, and in other ways. It is not within our province to require carriers to adjust their rates so as to equalize natural or commercial disadvantages. *Louisville Cotton Seed Products Co. v. L. & N. R. R. Co.*, 26 I. C. C., 607; *Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co.*, 27 I. C. C., 83; *Port Arthur Board of Trade v. A. & S. Ry. Co.*, 27 I. C. C., 388; *Alpha Portland Cement Co. v. B. & O. R. R. Co.*, 34 I. C. C., 414.

It appears that the importation of English clay has somewhat decreased during the past two years. Figures introduced by the operators, which were taken from a report of the Department of Commerce, show the total number of gross tons of English clay imported into the United States for the respective fiscal years to have been: 1911, 229,666; 1912, 233,332; 1913, 262,614; 1914, 236,554; 1915, 227,830.

The import duty on English clay is \$1.25 per gross ton. Prior to October, 1913, it was \$2.50. Although it is asserted that the ocean

and rail lines offset the reduction in the import duty by a corresponding increase in their rates on imported clay, it appears that complainants have encountered more active competition since this reduction.

Clay is also mined in the states of Pennsylvania and Maryland. The operators were unable to give specific instances of business lost because of the present rate adjustment, nor were they definitely informed of the competitive conditions which they assert they are forced to meet. Their principal grievance seems to be summed up in the following statement by one of their witnesses:

Our complaint is not so much that we have been unable to market sufficient tonnage but that we have been forced to reduce our prices below a reasonable price for the effort put into the operation and the amount of capital involved, and therefore we feel it very greatly as to the disparity between the import and domestic rates.

The operators were unable to show that they are under competitive disadvantages at any point where the difference between the domestic rates from Georgia and the import rates from north Atlantic ports does not exceed the amount of the import duty. It will be noted from the above table that the difference between the import rate from New York and the domestic rate from Georgia does not exceed the customs duty of \$1.12 per net ton, except to Steubenville, East Liverpool, Cleveland, and Detroit. This probably results from the fact that those points are much nearer New York than they are to the Georgia producing points. As illustrative of the relationship between the operators and their foreign competitors from a rate standpoint, when the import duty is added to the import rate from north Atlantic ports, we have prepared the following table, which shows the relative rate situation on a per ton-mile basis, the import rate from north Atlantic ports being shown per net ton with the net ton import duty of \$1.12 added:

To—	From New York.			From Philadelphia.			From Georgia points.		
	Dis- tance.	Import rate per ton with duty per net ton added.	Per ton- mile.	Dis- tance.	Import rate per ton with duty per net ton added.	Per ton- mile.	Aver- age dis- tance.	Do- mestic rate per ton.	Per ton- mile.
	<i>Miles.</i>			<i>Miles.</i>			<i>Miles.</i>		<i>Miles.</i>
Steubenville.....	487	\$4.06	8.3	396	\$3.66	9.2	892	\$4.70	5.2
East Liverpool.....	488	4.06	8.1	397	3.66	9.2	916	4.70	5.1
Cincinnati.....	757	4.12	5.4	666	3.72	5.6	608	3.00	4.9
Cleveland.....	584	4.06	6.9	493	3.66	7.4	872	4.22	4.8
Dayton.....	708	4.06	5.7	617	3.66	5.9	665	3.44	5.1
Indianapolis.....	825	4.32	5.2	724	3.92	5.3	720	3.60	5.0
South Bend.....	851	4.34	5.1	772	3.94	5.1	861	4.15	4.8
Chicago.....	912	4.52	4.9	821	4.12	5.1	866	4.15	4.8
Detroit.....	693	4.06	5.8	669	3.66	5.4	880	4.28	4.9
Kalamazoo.....	837	4.34	5.1	749	3.94	5.2	933	4.34	4.6

It will be noted that, when viewed from this standpoint, the Georgia clay has an advantage over the imported article. It is stated that the ocean rate for the transportation of English clay to the north Atlantic ports is \$2.36 per ton. If this were added to the rail rate from the ports and the import duty, and reduced to a per ton-mile unit, the advantage in favor of the domestic product would be more marked.

Respondents urge that the rates from Georgia producing points and the import rates from north Atlantic ports are made by separate groups of carriers, each acting independently of, and in competition with, the other; that the carriers that originate this Georgia traffic and their connections south of the Ohio River make and control the rates to the Ohio River crossings, to which are added the rates of the lines north of that river. The proportional rate from the Georgia mines to the Ohio River is \$2.60 per net ton. It is also asserted that the trunk lines serving the north Atlantic ports are responsible for the import rates from those ports and that these rates are equalized by the Gulf lines on a differential basis.

The rates from Georgia producing points have from time to time been reduced in order to enable the domestic operators to market their product. It appears that the clay-producing industry in that state was started at points on the Macon, Dublin & Savannah Railroad in 1899, at which time the rate to the Ohio River crossings was \$4 per ton. Upon complaint of the operators that under this rate they were unable to dispose of their product in competition with Pennsylvania and Maryland producers the rate was reduced in 1901 to \$3.60 per ton. This rate remained in effect until 1903, when the Macon, Dublin & Savannah, in connection with the Central of Georgia Railway and the Nashville, Chattanooga & St. Louis Railway, reduced it to 13 cents per 100 pounds, or \$2.60 per ton. This rate was inoperative because the necessary connecting lines refused to participate therein, and it was withdrawn. On June 24, 1903, a rate of 15 cents per 100 pounds was established. Subsequently, upon further complaint of the Georgia operators that they were unable to compete with the imported clay moving through the port of New York, the Macon, Dublin & Savannah published, effective January 16, 1904, and subsequently joined in by its connections, the proportional rate of \$2.60 per ton now in effect.

With reference to the differential adjustment of the import rates from Gulf ports, to which we have referred, the lines operating from those ports explain that they do not publish import rates lower than the domestic rates to any points in central freight association territory east of the so-called 100 per cent territory, or a line drawn from Chicago through Indianapolis. It is stated that, generally, the im-

port rates from Gulf ports to points in the territory west of the line just mentioned are made uniform differentials under the all-rail rates from New York and other north Atlantic ports. These differentials under New York range from 18 cents per 100 pounds first class to 6 cents per 100 pounds on sixth class and on commodities moving under rates lower than sixth class. The 6-cent differential is applicable to clay. The import rate so constructed is subject to the domestic rate from the port as maximum. It is asserted that these differentials are necessary to overcome the disadvantages under which the rail lines and water carriers serving the Gulf ports operate, and to enable them to secure an import movement from Europe through the Gulf ports. This adjustment was fully described in our report in *Import and Domestic Rates*, 36 I. C. C., 389, on which case respondents rely in the instant case, and it need not be further explained here. The operators, however, have no particular objection to the import rates through Gulf ports, as the volume of clay moving through those ports is very small. It appears that the total tonnage of imported clay moving through all the Gulf ports for the past four years was less than 3,000 tons.

In *Import and Domestic Rates*, *supra*, we considered the question of whether or not the domestic rates on brewer's rice from Gulf ports to various destinations in the United States were unjustly discriminatory because of the maintenance of lower import rates from the same ports to the same destinations. It appeared that the import rates from Gulf ports were not made with reference to the domestic rates, but were differentially adjusted under and controlled by the import rates through the north Atlantic ports. In addition to reaffirming the established principle that the publication of import rates on certain traffic lower than on similar domestic traffic does not of itself constitute unjust discrimination, we held that the competition of the lines operating from Gulf ports with those operating from north Atlantic ports for this import traffic, which element was not present in the domestic movement, was a sufficient justification for the maintenance from Gulf ports of import rates on brewer's rice lower than the domestic rates. We see no reason for a different conclusion in this case. For competitive reasons the lines operating from Gulf ports have established to certain parts of the destination territory in question import rates on clay which are the recognized differentials under the import rates from the north Atlantic ports. It does not appear that any of the southern lines that participate in the domestic traffic from Georgia producing points also participate in the import rates from north Atlantic ports unless it be the line of the Southern Railway from Louisville, Ky., to St. Louis. The movement, if any, by that route is not shown.

Following our decision in *Import and Domestic Rates, supra*, we find that the carriers that participate in the rates on clay from Georgia producing points and at the same time participate in lower import rates on clay from Gulf ports do not thereby unlawfully discriminate against the operators or the domestic traffic.

While admitting that the southern lines have been helpful in reducing the difficulties they have encountered, the operators insist that the lines north of the Ohio River and those from north Atlantic ports are primarily responsible for the discrimination which is alleged to exist. It does not appear which, if any, of the lines operating from north Atlantic ports participate in both the import rates from those ports and the domestic rates from Georgia to the destinations in question. While it must be true that certain lines in central freight association territory participate in both sets of rates, the operators have not attempted to show by which of these lines the traffic moves, the extent to which any of them participate therein, or whether or not the conditions are substantially similar. The operators' view seems to be that the present relationship of the import rates from north Atlantic ports to the domestic rates from Georgia is unjustly discriminatory because the import rates on clay from north Atlantic ports are lower than the domestic rates from those ports and lower than the rates from Georgia mines. This does not necessarily follow. Since the decision of the Supreme Court in *Texas & Pacific Railway Co. v. Interstate Commerce Commission*, 162 U. S., 197, we have in a number of cases recognized the right of carriers to maintain lower rates on import traffic and have held that such an adjustment is not of itself unlawful, but that unjust discrimination, if alleged, is a question of fact to be determined by the circumstances and conditions in each case. *Pittsburgh Plate Glass Co. v. P., C., & St. L. Ry. Co.*, 13 I. C. C., 87; *Import and Domestic Rates, supra*; and *Louisiana Sugar Planters Asso. v. I. C. R. R. Co.*, 31 I. C. C., 311. In the last cited case we said, at page 317:

The complainants insist that as the service rendered in transporting the imported blackstrap is exactly the same as the service rendered in transporting the domestic blackstrap, there can be no lower rate on imported blackstrap than on domestic blackstrap. It is now too late, however, to discuss that question, as the Supreme Court in *Texas & Pacific Ry. Co. v. Interstate Commerce Commission*, 162 U. S., 197, known as the *Import Rate Case*, held that foreign traffic when carried from the port of entry to final destination and domestic traffic carried from the same port to the same destination are not traffic of "like kinds," and that the service in the one case is not performed under circumstances and conditions substantially similar to those under which the service rendered in the other case is performed, and that therefore the rates on the two kinds of traffic need not be the same. Following that case we have repeatedly recognized the right of carriers to maintain lower rates on import traffic than on domestic traffic, and imported goods move in large

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volume on special rates which are lower than the rates charged on goods of the same kind which have not been imported. It does not follow, however, because an import rate which is lower than the domestic rate may be maintained on blackstrap that the difference in the two rates may be whatever the carriers may choose to establish. In the *Import Rate Case, supra*, the court held that the Commission in determining whether or not the difference made by the carrier between the import rate and the domestic rate was unjust should consider all the circumstances and conditions, including the interests of carriers, producers, dealers, and consumers.

Here also the question of whether or not the present relationship of rates is unjustly discriminatory is one of fact. It appears that the Georgia producers have encountered certain natural obstacles in attempting to introduce their clay in American markets, but that these are gradually being surmounted and their production from year to year is increasing and supplanting English clay, the importation of which is decreasing.

From all the facts and circumstances of record we are of the opinion, and find, that the domestic rates on clay from producing points in Georgia to central freight association territory are not shown to be unjustly discriminatory.

39 I. C. C.

No. 7031.
CAPITAL CITY OIL COMPANY ET AL.
v.
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
ET AL.

Submitted January 18, 1915. Decided April 27, 1916.

Carload rates on cotton seed from points on defendants' lines in the state of Mississippi to Baton Rouge and New Orleans, La., not shown to be unreasonable or unduly prejudicial. Complaint dismissed.

W. M. Barrow for complainants.

A. P. Humburg and *F. W. Gwathmey* for defendants.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The complainants are the Capital City Oil Company and the Terminal Oil Mill Company, corporations, manufacturing cotton-seed products at Baton Rouge and New Orleans, respectively. Baton Rouge is served by the Yazoo & Mississippi Valley Railroad, and New Orleans is served by the Yazoo & Mississippi Valley Railroad and the Illinois Central Railroad. These two carriers are the sole defendants.

These complainants for some years prior to 1913 obtained their cotton seed largely from Louisiana and in particular from the northern and western part of that state. In the fall of 1913 the complainants were unable to obtain from their ordinary sources of supply the grade of cotton seed requisite to fill certain contracts which they had made. Accordingly they entered the territory in northern Mississippi to secure seed of the necessary quality. It appears from the record that no considerable amount of cotton seed is produced in Mississippi or Louisiana east of the Mississippi River and south of Vicksburg. The complainants therefore felt obliged to secure seed in northern Mississippi in competition with numerous Mississippi mills located in that region and in competition with mills in Memphis, which is only 11 miles north of the Mississippi line, and which is said to be the greatest market for cotton seed in the United States. It appears that the average weighted distance traversed by the cotton seed from northern Mississippi to Baton Rouge was over 250 miles, and to New Orleans was about 320 miles. The average haul of cot-

ton seed to local Mississippi mills is said to range from 50 to 75 miles, and from this region to Memphis to average but little over 90 miles. The complainants therefore found themselves under the double disability of having to seek their supply in a new market and to ship the supply a much longer distance on the average than the interior Mississippi or Memphis mills, their main competitors. The complainants aver that the rates which were exacted of them were unreasonable *per se*, and were unjustly prejudicial to themselves in comparison with the rates from northern Mississippi points to the local Mississippi mills and to the Memphis mills. Complainants therefore assail the rates on the ground of their alleged unreasonableness, and on the ground of their discriminatory character, and pray for reparation estimated at the excess charge over and above the charges collectible for like distances to Memphis or to the interior Mississippi mills from points in Mississippi.

The Capital City Oil Company also complains of undue prejudice against itself in that rates on cotton seed originating at points on the Illinois Central in Mississippi consigned to Baton Rouge are based on the combination of local rates over the two carriers in question, whereas shipments originating at Mississippi points on the Yazoo & Mississippi Valley consigned to New Orleans move on continuous mileage rates, the two carriers treating shipments to New Orleans as though moving on one continuous line of railroad.

It appears from the record that Memphis is in the center of cottonseed producing territory, and that there are in Memphis some 11 cottonseed oil mills, and in Mississippi 78 oil mills, 58 of which are located upon the defendants' lines.

Owing to the ravages of the boll weevil the production of cotton seed south of the Alabama & Vicksburg Railway has very greatly decreased. Deprived of the supply in its more immediate vicinity, New Orleans has declined as a cottonseed market, there being at present but three active oil mills in New Orleans. It is also stated in the record that at present 25,000 tons would be a large receipt for a season at New Orleans, whereas seven or eight years ago New Orleans receipts ranged from 120,000 to 125,000 tons per year. Complainants contend that they were at an average disadvantage in the matter of rates of something like \$1 per ton in comparison with the mills in northern Mississippi and Memphis. After complainants' entry into this market as buyers of seed the price per ton rapidly increased \$2 or \$3 over the ruling price before complainants came into this region. They admit, however, that by their purchases in this general region they succeeded, despite the freight rates paid, in filling their contracts without pecuniary loss to themselves.

The Mississippi state rates were fixed by the state commission in 1900. Under this scale the maximum rate is 12 cents per 100

pounds, or \$2.40 per ton, carloads, applicable for distances over 200 miles up to 300 miles. The defendants made this state scale effective under protest; but on representation by the Memphis mills that unless they were accorded equally favorable rates it would be necessary to remove the Memphis mills to Mississippi, the carriers put in from Mississippi points to Memphis rates which were essentially the equivalent of the Mississippi mileage scale. Until the shipments embraced in this complaint moved, there had been, so far as the record shows, no complaint against the rates southbound to Baton Rouge or New Orleans. The burden of proof to show that the rates complained of are unjust and unreasonable lies upon the complainants.

The evidence against the reasonableness *per se* of the rates exacted is not persuasive. Articles such as sugar and corn, the rates on which are compared with those on cotton seed, are admittedly not competitive with cotton seed. The transportation conditions and other circumstances attending the transportation of the articles compared are not put of record. Nor is the evidence convincing which is built upon a comparison of rates upon cotton seed into mill points and the estimated revenue on the outbound products from the mill points, inasmuch as the destination of the products is necessarily conjectural. It appears that upon the complainants' cotton seed carried to Baton Rouge the average charge was about \$3.02 per ton, or 15.1 cents per 100 pounds. The average charge upon the cotton seed to the complainants at New Orleans was \$3.347 per ton, or 16.7 cents per 100 pounds. In Louisiana cottonseed rates on the Louisiana Railway & Navigation Company are \$3 per ton, or 15 cents per 100 pounds, for distances over 170 miles; and over the Texas & Pacific Railway for 210 miles or over, 15 cents per 100 pounds, or \$3 per ton. It would not appear, therefore, that the rates actually paid are materially in excess of the rates applicable for hauls within Louisiana, where complainants formerly obtained a large part of their cotton seed. For comparison of the rates charged complainants with rates in effect in this general territory the following tables are of service:

TABLE A.

	10 miles.	25 miles.	50 miles.	75 miles.	100 miles.	150 miles.	200 miles.	250 miles.	300 miles.	350 miles.	400 miles.	450 miles.
From Mississippi points to Memphis via—												
I. C.	5	5	7	8	8	10	11	15	15			
Y. & M. V.	5	5	7	8	8	10	11	12	12	17½	17½	
From Y. & M. V. points to Baton Rouge via Y. & M. V.	5	6½	10½	11½	11½	13	14	15½	16½	17		
From I. C. points to New Orleans via I. C.					9½	11½	13	19	19½	20½	21½	21½
From Y. & M. V. points to New Orleans via Y. & M. V.						13	14	15	16½	17	17½	18

TABLE B.

	10 miles.	25 miles.	50 miles.	75 miles.	100 miles.	150 miles.	200 miles.	250 miles.	300 miles.	350 miles.	400 miles.	450 miles.	500 miles.
Mississippi state scale ¹	4	5	7	8	8	10	11	12	12	.....	.....	.....	.....
Louisiana Railway & Navigation rates in Louisiana ²	5	8½	10	11½	12	13½	15	15	15	.....	.....	.....	.....
Texas & Pacific rates in Louisiana ²	3	4½	6	7½	8½	10	14½	15	15	.....	.....	.....	.....
Y. & M. V. rates in Louisiana ²	5	6½	8½	10	10	12½	13½	.....	.....	.....	.....	.....	.....
I. C. rates in Louisiana ²	5	6½	8½	10	10	.....	.....	.....	.....	.....	.....	.....	.....
I. C. interstate scale.....	5½	9	11½	13	14	16½	18	19½	20	20½	21	21½	22½
Y. & M. V. interstate scale.....	6	7½	9½	10½	11½	13	14	15½	16½	17	17½	18	.....

¹ Maximum rate under scale is 12 cents for one-line haul.

² Maximum rate for one-line haul, under order of state commission, is 15 cents.

Defendants' rates shown in the tables above are not mileage rates, but are specific rates from specific points, some of which are published in cents per 100 pounds and others in dollars and cents per ton.

The rates of the Yazoo & Mississippi Valley Railroad, which are the rates involved in the reparation claims herein, are not materially higher than the rates prescribed by the Commission in *Florida Cotton Oil Co. v. C. of Ga. Ry. Co.*, 19 I. C. C., 336; in *Memphis Freight Bureau v. St. L. S. W. Ry. Co.*, 20 I. C. C., 33; or in *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 22 I. C. C., 548.

We therefore find and determine that complainants have not shown that the rates charged and collected upon the shipments involved are unjust or unreasonable.

The allegation of undue prejudice and disadvantage was based essentially upon a comparison of the rates exacted for the distances covered by the shipments made by complainants as compared with the rates for similar distances under the Mississippi scale or under the interstate tariff applicable from Mississippi points to Memphis. It would seem, however, that of the 57 cars shipped by the Capital City Oil Company all but two moved for distances of over 242 miles, and that the average weighted haul was 254.7 miles. It similarly is in evidence that of the 75 cars transported for the New Orleans Terminal Oil Mill Company the shortest haul was 263 miles, and the average weighted haul was 321.2 miles, the maximum being 379 miles. On the other hand, the record shows that the mills in the interior of northern Mississippi and the mills at Memphis transport their cotton seed a very much shorter distance, the average haul to Memphis being, as heretofore indicated, but 93 miles, and the haul to interior Mississippi mills not over 75 miles on the average. It also appears that practically no cotton seed at all is shipped in by the Memphis mills or the mills in northern Mississippi from the region south of the Alabama & Vicksburg Railway.

An exhibit introduced by defendants showing the movement of cotton seed into Memphis over the lines of both carriers from September 1, 1913, to June 20, 1914, showed that the farthest point

from which Memphis drew seed was Aberdeen, 261 miles distant, the amount of said shipment being 29 tons. In reality, therefore, the two complainants, before they obtained cotton seed at all, had to reach out a distance as great as the maximum distance from which their Memphis competitors secured any part of their supply. In other words, the minimum haul to Baton Rouge and New Orleans was greater than the maximum haul to their competitors' mills at Memphis. The rates, therefore, which the two complainants paid can not be directly compared with rates which their competitors actually paid, but with rates which it is averred their competitors would have had to pay if their competitors had shipped over equally long distances. In other words, we have here essentially a comparison of actual rates with paper rates, and this affords a very insecure basis for a finding of undue or unlawful prejudice against the complainants. This view is reenforced by the fact that the published interstate rate to Memphis for a distance of 300 miles is 15 cents as against 15.1 cents, the average charge per 100 pounds on shipments to Baton Rouge, and 16.7 cents, the average charge per 100 pounds on the haul to New Orleans. Furthermore, for two-line hauls from points in Mississippi to Memphis rates are substantially higher than those effective over the lines of the defendants before us.

The carriers allege also that the situation of Memphis as regards the transportation of cotton seed is unique; that Memphis is the greatest market in the country for cotton seed and its products; that it is in the heart of the cottonseed producing territory; that it is the focus of cottonseed traffic from all directions, attracting seed from Tennessee and Arkansas as well as from the region south of Memphis; that rates to Memphis are influenced not only by market and carrier competition but also by actual wagon competition and by actual or potential competition by water not only on the Mississippi River, but on other streams that thread this cotton-growing region. There would seem to be some substantial force in this contention that the Memphis market is one differentiated from Baton Rouge and New Orleans by a variety of circumstances which make low rates for the short haul into Memphis warranted by reason of the extreme density of this traffic.

On the other hand, we are not disposed to attach any compelling weight to the carriers' contention that the cottonseed rates in Mississippi or from Mississippi to Memphis are involuntary rates. Involuntary rates they were at the beginning and within the state of Mississippi, but the carriers' practical acquiescence therein and their substantial extension thereof across the Mississippi state line and their maintenance on the present level since 1900, dispose of the contention that these rates are now involuntary. Nor do we attribute any

considerable weight to the allegation that transportation of cotton seed for longer distances, involving its transfer from one division of the road to another, makes the haul more expensive than for short distances embraced within a single division of the road. The fact that normal transportation costs decline per ton-mile the greater the distance traversed is too firmly established to admit that this cottonseed traffic is an exception to the general rule without proof very much stronger than any the record affords. Equally lacking in cogency is the carriers' contention that they must be considered as distinct operating entities. The controlling interests of both carriers are known to be the same. In too many instances they operate their lines as though they were under single control to allow us to admit that as regards this particular traffic the making of rates should be based upon the theory that two independent carriers are involved.

The contention, therefore, which the Baton Rouge complainant makes that it is subjected to undue prejudice by reason of the fact that on traffic originating, or that might originate, at Illinois Central points in Mississippi the rates to Baton Rouge are made on combination, whereas on shipments originating at Yazoo & Mississippi Valley points in Mississippi consigned to New Orleans via the Illinois Central rates are made upon the continuous mileage of the originating carrier, is well founded. The record, however, seems to present no case where traffic actually did originate at Mississippi points on the rails of the Illinois Central, nor are we asked to establish from particular points on that carrier in Mississippi joint rates to Baton Rouge. To such joint rates made on the continuous mileage scale of the originating carrier Baton Rouge is clearly entitled, and the defendants herein will be expected to reform their tariffs to effect this result.

We are of opinion and find that the undue prejudice and disadvantage alleged by complainants to exist against Baton Rouge and New Orleans in the matter of shipments here involved has not been proved. Even comparing the actual rates paid with lower paper rates which their competitors would theoretically have to pay for the same distance, we are of opinion that it has not been proved that the discrimination, if any, in favor of Memphis or the interior mills in northern Mississippi is undue or unlawful.

The complaint will accordingly be dismissed and reparation denied.

39 I. C. C.

No. 7637.
GISHOLT MACHINE COMPANY ET AL.
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY.

Submitted November 5, 1915. Decided April 28, 1916.

Charges collected for the transportation of a less-than-carload shipment of iron-working machinery from Madison, Wis., to Chicago, Ill., found to have been excessive by reason of the failure of defendant's tariff, which named a commodity rate thereon, to provide for the application of the rate named to shipments set up on skids. Reparation awarded.

H. J. Parke for complainant.

A. F. Cleveland for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of iron-working machinery with its main office and factory at Madison, Wis. By complaint, filed January 2, 1915, it alleges that the rate charged by defendants for the transportation of a less-than-carload shipment of iron-working machinery from Madison, Wis., to Chicago, Ill., during November, 1913, was unjust and unlawful. Reparation is asked in the sum of \$9.07. The complaint was amended at the hearing to include Jos. T. Ryerson & Son, a corporation doing business in Chicago, as a party complainant.

A less-than-carload commodity rate of 17½ cents per 100 pounds applied over defendant's line from Madison to Chicago, on "iron machinery and parts thereof, s. u., in boxes or crates." Complainant's machine was set up on skids and the commodity rate was not applicable. The shipment weighed 4,320 pounds and charges were collected in the sum of \$16.63 at the first-class rate of 38½ cents, governed by the western classification, which rated such machinery first class when "s. u., on skids or loose," or, "s. u., in boxes or crates."

Defendant maintains a commodity rate from Madison to Chicago on less-than-carload shipments of machinery of the character involved and has done so for many years. Prior to September 1, 1913, the tariff publishing the commodity rate permitted loading on skids, but a reissue thereof, effective September 1, 1913, omitted this provision. The omission was supplied on February 16, 1914, and all

subsequent issues of the tariff have contained provisions relative to the loading of such shipments substantially similar to the provisions of the classification.

Complainant states that it was not advised when the shipments moved that defendant's tariff had been changed, else the shipment would have been forwarded by way of the Chicago, Milwaukee & St. Paul Railway which maintained a commodity rate of 17½ cents applicable to the shipment, with tariff authority for loading on skids, or by way of the Illinois Central Railroad. The latter, however, had no such rate until June 23, 1914. Defendant states that the omission in the tariff referred to was unintentional, and that it was supplied as soon as defendant found out about it. Defendant is willing to make reparation.

We find that the shipment was made in accordance with the foregoing statement of facts; that defendant's tariff was unreasonable in failing to provide for the application of the 17½-cent commodity rate to machinery, set up, on skids; that charges accordingly were collected on the shipment which were unreasonable to the extent that they exceeded the charges that would have accrued if the 17½-cent rate had been applicable which we find to have been reasonable; that Jos. T. Ryerson & Son paid and bore charges on the shipment herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued on the basis herein found reasonable, and that it is entitled to reparation in the sum of \$9.07, with interest from February 16, 1914.

An order awarding reparation will be entered, but as no provision of defendant's present tariffs is in issue and the provision assailed was corrected more than two years ago, no order will be entered for the future.

No. 6588.
MUTUAL RICE TRADE & DEVELOPMENT ASSOCIATION
v.
INTERNATIONAL & GREAT NORTHERN RAILWAY
COMPANY ET AL.

Submitted November 5, 1914. Decided April 27, 1916.

1. Carload rates on domestic brewers' rice from Houston, Tex., to various points in central freight association territory and to points in Illinois, which are certain differentials over the rates on domestic brewers' rice from New Orleans, La., to the same points, not found unduly prejudicial to Houston.
2. Where rates on imported brewers' rice from Galveston, Tex., to Chicago, Ill., Indianapolis, Ind., or other interior points, are more than 6 cents lower than rates on imported brewers' rice from New York to the same points, it is unjustly discriminatory to charge higher rates on domestic than on import shipments from Galveston or Houston. *Import and Domestic Rates*, 36 I. C. C., 389.
3. An increase of 5 cents per 100 pounds in the rate on clean rice from Houston to north Pacific coast points, effective February 1, 1914, found justified.

S. H. Cowan for complainant.

Wilson, Dabney & King and *L. M. Hogsett* for International & Great Northern Railway Company.

T. J. Norton, J. S. Hershey, and *P. G. Safford* for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

Charles H. McNair for Beaumont, Sour Lake & Western Railway Company and its receiver and St. Louis, Brownsville, Mexico & Orient Railway Company and its receiver.

F. H. Wood; Baker, Botts, Parker & Garwood; and *J. H. Tallichet* for Houston & Texas Central Railroad Company; Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; and Southern Pacific Company.

John T. Bowe for Trinity & Brazos Valley Railway Company.

Fred G. Wright and *C. C. P. Rausch* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The two most important products resulting from the milling of rough rice are clean rice for table use and brewers' rice; the latter

product is clean rice which in the milling process has been broken or cracked, and is used largely in the manufacture of beer. From 100 pounds of rough rice there are derived approximately 60 pounds of clean rice, 6 pounds of brewers' rice, and 32 pounds of "polish," bran, and hulls, the milling process resulting in an estimated invisible loss of 2 per cent. Next to clean rice the most valuable product is brewers' rice; the hulls have practically no value and in some cases are burned. The polish and bran are used chiefly in the manufacture of animal feeds. By a tariff filed to become effective on December 10, 1912, there was established at Houston and other points in the state of Texas a milling-in-transit service on rough rice, by virtue of which through carload rates on clean rice and the other products, varying in amount, were made to apply from the points of origin of the rough rice to the ultimate destination of the product, a charge of 2 cents per 100 pounds being made on account of the transit service. On November 5, 1913, the through rates on brewers' rice, polish, bran, and hulls were increased to the level of the rates on clean rice.

While the complaint alleges, among other things, that the increased interstate rates on the lower grade products are unjust and unreasonable, that issue is no longer before us, for by a tariff filed after the hearing and which became effective on September 1, 1914, the transit item in question was canceled and there is no longer any provision for the application of through rates on rice products reshipped from milling points. The legality of the last-named tariff is under attack in *Southern Rice Growers' Asso. and others against T. & N. O. R. R. Co. and others*, not yet decided. The complainants in this proceeding are parties also to that record, the issue in which broadly involves the maintenance and application in Texas and Louisiana of milling-in-transit rules on rough rice and its products.

Although the complaint attacks as unjust and unreasonable the carload rates on clean rice and the other products of rough rice from Houston to Chicago, Indianapolis, Cincinnati, Louisville, and intermediate points, no evidence in support of this contention, except with respect to brewers' rice, was introduced by the complainant; and in *1915 Western Rate Advance Case*, 35 I. C. C., 497, 612-614, increases of from one-half cent to 10½ cents per 100 pounds in the carload rates on brewers' rice from and to various points, including those herein involved, were found to have been justified. That question therefore need not be further considered here.

A third allegation is that the present carload rates to destinations, broadly speaking, in central freight association territory, on domestic brewers' rice from New Orleans, and on imported brewers' rice from Galveston, both of which are lower to the same destinations than the rates on domestic brewers' rice from Galveston and Houston, subject

the domestic product at Houston to unjust discrimination and undue prejudice (a) in favor of the domestic product at New Orleans and (b) in favor of the imported product shipped to inland destinations from Galveston. To certain points in central freight association territory east of the Indiana-Illinois state line the rates from Houston are 10 cents higher than the rates from New Orleans to the same points, and to destinations in Illinois the rates from Houston are 5 cents higher than those from New Orleans. In *Mutual Rice Trade & Development Asso. of Houston v. I. & G. N. R. R. Co.*, 23 I. C. C., 219, it was contended that the lower rates on clean rice from New Orleans than from Houston to those destination points resulted in an undue discrimination against Houston. But this contention was not sustained, the report stating, at p. 223:

A careful examination of the relative rates applying to Illinois and to central freight association territory does not disclose that the rates from Texas points to these territories are discriminatory. New Orleans enjoys natural advantages entitling it to better rates to these points, and we can not conclude from this record that the existing carload differentials in favor of New Orleans of 5 cents to Illinois and 10 cents to central freight association territory make an undue allowance for this difference. New Orleans is on the average about 150 miles nearer to Illinois points and about 200 miles nearer to central freight association territory points than are the Texas milling centers. We therefore find no warrant in the present record for disturbing these rates.

We are compelled to reach the same conclusions and to make the same finding on the facts disclosed of record here.

The contention of the complainant that lower rates on import brewers' rice from Galveston than on domestic brewers' rice from that port and Houston to Chicago, Indianapolis, Cincinnati, and Louisville subject the domestic product to undue prejudice and disadvantage was considered in *Import and Domestic Rates*, 36 I. C. C., 389. Our finding in that proceeding was that where the carriers maintained from the Gulf ports import rates on brewers' rice to those destinations more than 6 cents lower than the import rates contemporaneously in effect from New York to the same destination points, it is unjustly discriminatory to charge higher rates on the domestic than on the import shipments. On the record before us the same finding is applicable here.

As heretofore explained, certain phases of this complaint were involved in other proceedings, and the disposition of this case has therefore been deferred. Those matters of complaint have either had consideration or will presently be disposed of in the other cases mentioned. There remains for consideration, however, the increase from 60 cents to 65 cents per 100 pounds made in the rates on clean rice from Houston to north Pacific coast points on February 1, 1914. The increased rate to Portland, for example, yields

ton-mile earnings of but 4.66 mills. By way of comparison the defendants referred to the rate of 75 cents per 100 pounds on beans and peas from Houston to north Pacific coast terminals in effect at the time of the hearing; on barley, 90 cents; on corn, 75 cents; on wheat, \$1; on oil-cake meal, fuller's earth and potatoes, lumber, staves, and heading, 75 cents. These comparisons strongly indicate that the rate of 65 cents on clean rice is not unreasonable, and we so find.

As the unlawful discrimination between the import and domestic rates on brewers' rice from the Gulf ports to interior points is required in *Import and Domestic Rates, supra*, to be removed, an order to that effect in this case is unnecessary. The complaint will therefore be dismissed, and it will be so ordered.

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No. 5992.
BLACK MOUNTAIN CORPORATION
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY
ET AL.

Submitted November 12, 1914. Decided May 2, 1916.

1. The combination rate of \$1.95 per net ton on bituminous coal from the Black Mountain district in Virginia to Atlanta, Ga., applicable by way of the Louisville & Nashville Railroad and Southern Railway through Cumberland Gap, Tenn., found to be unreasonable. The Louisville & Nashville Railroad required to establish a rate for the future not to exceed \$1.70 per net ton to apply over its own rails through Corbin, Ky., or in connection with the Southern Railway through Cumberland Gap.
2. The combination rate of \$1.74 per gross ton on bituminous coal from the Black Mountain district to Norfolk, Va., for delivery to vessels destined to points outside the capes of Virginia, found to be unjustly discriminatory to the extent that it exceeds the rate from Norton, Va., to Norfolk, applicable on like traffic, by more than 20 cents per gross ton.

Frank Lyon and R. T. Irvine for complainant.

N. W. Proctor for Louisville & Nashville Railroad Company.

L. H. Cocke for Norfolk & Western Railway Company.

A. W. Bull and C. B. Northrop for Southern Railway Company and Virginia & Southwestern Railway Company.

J. F. Bullitt for Stonega Coal & Coke Company and Interstate Railroad Company.

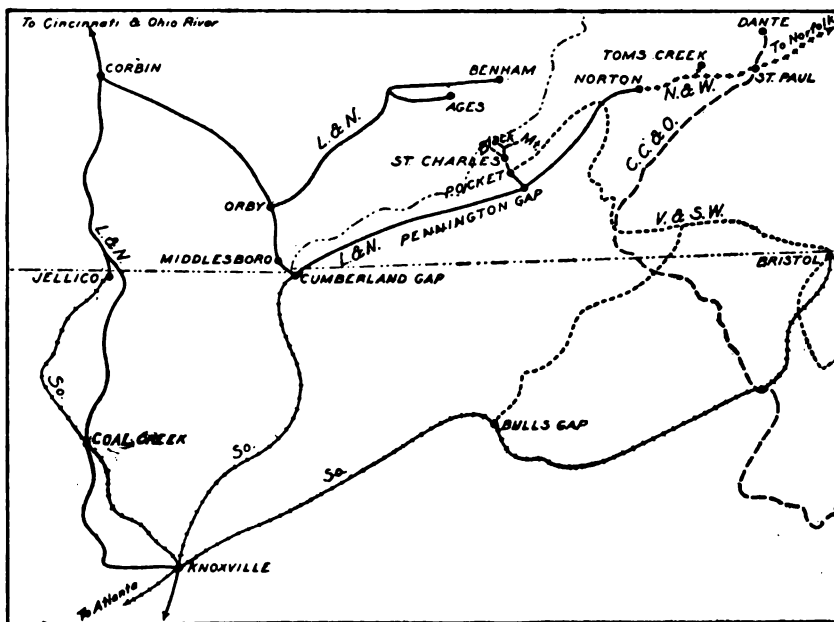
F. B. James and E. E. Williamson for Southern Appalachian Coal Operators' Association.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The petitioner in this proceeding is the owner of a large tract of coal land situated in Lee county, in the state of Virginia, and in Harlan county, in the state of Kentucky, known generally as the Black Mountain field. It leases portions of its land to coal operators upon a royalty basis, and has filed this complaint not only in its own interest, but on behalf of its lessees and others having coal mines in that district. The rates that are the subject of complaint are those applying to Atlanta and also the rates in effect to Norfolk when for delivery to vessels destined to points outside the capes of Virginia.

The Black Mountain district is a part of what is known as the Appalachia coal field, which extends from St. Charles, the assembling point for Black Mountain coal, on the west, to the Dante or Clinchfield district on the east, a distance of 60 miles or more. This field lies along the eastern and southern slopes of the Cumberland range, while to the west and southwest are the various groups of mines composing the eastern Tennessee and Kentucky coal fields. In *Bituminous Coal Rates to the Southeast*, 37 I. C. C., 652, we described the relative positions of the southwestern Virginia, the Kentucky, and Tennessee coal-producing districts, and in a general way the location of the lines of the carriers serving them. It is not necessary therefore to repeat that description at length here. The accom-



panying map, however, will show the location of the Black Mountain field and the routes of the carriers to the destinations here involved.

By reference to the map it will be observed that the Black Mountain district is served by two carriers, the Virginia & Southwestern and the Louisville & Nashville, the latter reaching the mines over the rails of the former from a point called Pocket. Coal moving by way of the Virginia & Southwestern is carried east to Appalachia and thence south to a connection with the Southern Railway at Bulls Gap. The distance to Atlanta by way of this route is 389 miles, and the rate is \$1.70 per net ton, producing a ton-mile revenue of 4.37 mills. The route of the Louisville & Nashville is through Cumberland Gap to Corbin over its Cumberland Valley division, and thence

south by way of the main line to Atlanta, a distance of 394 miles. No through commodity rates on coal are published by the Louisville & Nashville for this route.

There are two other available routes between the points in question, namely, by the Louisville & Nashville to Cumberland Gap, and thence over the Southern Railway through Knoxville, a total distance of 335 miles, or over the same route to Knoxville and thence by way of the Louisville & Nashville to destination. The latter route is the shorter, being approximately 310 miles in length, but it involves a transfer at Knoxville over the Knoxville & Atlanta Railroad, the Louisville & Nashville and the Southern Railway having no track connection at that point. No rate is published from the Black Mountain district to Atlanta over the route last mentioned, but coal may move by way of the former route under a proportional rate of 50 cents a ton to Cumberland Gap in connection with the local rate of \$1.45 a ton published by the Southern Railway from the Middlesboro group of mines. The through charges of \$1.95 a ton by way of Cumberland Gap thus exceed by 25 cents the rate applicable through Bulls Gap over the Virginia & Southwestern in connection with the Southern Railway, and this differential against the Cumberland Gap route prevents its practical use, although it is shorter by 54 miles than the Bulls Gap route. It should be observed here also that the Virginia & Southwestern is owned by the Southern Railway and forms a part of the Southern Railway system.

While the rate of \$1.70 from the Black Mountain district through Bulls Gap to Atlanta is alleged by the complainant to be unreasonable, it appears that the principal complaint is directed against the rate applying by way of the Louisville & Nashville and the Southern through Cumberland Gap and the failure of the Louisville & Nashville to state a rate over its line through Corbin. It is alleged that the present rate of \$1.95 per ton over the Cumberland Gap route is unreasonable to the extent that it exceeds \$1.55 per ton, or 10 cents higher than the rate from the Middlesboro group of mines, and further, that by reason of the fact that the Louisville & Nashville publishes a through rate of \$1.55 on coal to Atlanta from the mines at Ages and contiguous points on the Wasioto & Black Mountain branch that company is giving an undue and unreasonable preference and advantage to the locality north of Black Mountain, and is subjecting the complainant and others, engaged in mining coal in the Black Mountain field adjacent to the Cumberland Valley division, to undue and unreasonable prejudice. The distance from Ages to Atlanta is 374 miles, exceeding the distance from the Black Mountain district by way of Cumberland Gap by 89 miles, and the rate is 40 cents a ton less than the combination rate through Cumberland Gap and 15 cents a ton less than the joint

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rate through Bulls Gap. The rate from Benham, at the terminus of the Wasioto & Black Mountain branch and 17 miles farther than Ages, is \$1.65 a ton, 5 cents less than the rate in effect over the Virginia & Southwestern and Southern railways from the Black Mountain district to Atlanta, a haul of approximately the same distance. In view of the complainant's contention it is important to inquire into the reasons that have induced the Louisville & Nashville to apply lower rates from its mines on the Wasioto & Black Mountain branch than it accords to mines in the Black Mountain group.

The rate from Coal Creek, on the line of the Southern Railway, may be considered as the starting point for the adjustment of rates from mines served by the Louisville & Nashville. The rate to Atlanta from the Coal Creek group of mines is \$1.35 per ton, 15 cents higher than the rate from the mines in the Birmingham district of Alabama. To the north of Coal Creek lie the Jellico and Middlesboro groups, both served by the Southern Railway and both taking rates to Atlanta based upon a differential of 10 cents over the rate from Coal Creek, or \$1.45 per ton. It will be noted that these groups are reached by different branches of the Southern Railway, which converge at Knoxville, and that although the Louisville & Nashville also reaches both fields its route from the Middlesboro group is north through Corbin and thence south through the Jellico group. With a rate of \$1.45 applying from Middlesboro by way of the Southern Railway and a like rate applying from Jellico the Louisville & Nashville maintains that it can not consistently charge higher rates from the intermediate points on its line through Corbin. From Middlesboro to Corbin, over the Cumberland Valley division, and from Corbin to Jellico the road passes through a succession of coal mines and shipping points, and numerous short branches have been extended to mines not directly upon the main line. All these mines north of Middlesboro are in the same general coal field and entirely dependent upon the Louisville & Nashville for transportation; and in order, therefore, to enable them to market their coal in the south the Louisville & Nashville has given those mines the same rates through Corbin as apply over the Southern Railway from the Middlesboro and Jellico mines. The same policy has been maintained with respect to mines situated upon its branch lines, except that from some mines on the Wasioto & Black Mountain branch, including those at Ages and Harlan referred to by the complainant, it charges a rate 10 cents a ton higher than the Middlesboro basis, and at the end of that branch a rate 20 cents a ton higher than the Middlesboro basis.

The Cumberland Valley division of the Louisville & Nashville is the main line used by that road for its Cumberland Gap Despatch, a fast

freight line operated in connection with the Norfolk & Western through Norton to Atlantic coast points. The Black Mountain coal mines, as shown on the plat (*ante*, p. 154), are reached over a branch line about 5 miles from a main-line point on the Cumberland Valley division known as Pennington. Except for that short distance, the route of the Louisville & Nashville from the Black Mountain coal fields through Corbin to Atlanta is entirely over main lines of that carrier. On the other hand, coal from mines on the Wasioto & Black Mountain branch reaches the main line at Orby after a branch-line haul varying from a few miles to as much as 60 miles in length. Beyond Orby, which is also 60 miles from the Black Mountain mines, the transportation is the same, regardless of the point of origin of the coal.

Between Benham and Orby on the Wasioto & Black Mountain branch, a distance precisely the same as the distance from Black Mountain to Orby, there is a very meager movement of general merchandise, while a considerable volume of general freight moves over the main line between Pennington and Orby, over which the Black Mountain coal moves after a short branch-line haul of 5 miles to Pennington. Nevertheless the present rate from Benham is 30 cents a ton less than the combination of rates from Black Mountain through Cumberland Gap to Atlanta, this being the only available rate on coal from the Black Mountain district now published by the Louisville & Nashville. It is to be observed also that the present rate from Benham is 5 cents a ton less than the through rate to Atlanta now in effect over the Virginia & Southwestern and the Southern railways. By way of justifying its refusal to state a commodity rate over its own rails from Black Mountain through Corbin to Atlanta, the Louisville & Nashville shows that the Black Mountain district already has an outlet for its product through Bulls Gap, and that the revenue of the Virginia & Southwestern and the Southern railways under their \$1.70 rate would not satisfy the Louisville & Nashville for its haul through Corbin of 394 miles. Whatever merit there may be in this contention seems to be nullified by the fact that the Louisville & Nashville has voluntarily established a rate from Benham of \$1.65, which produces a lower ton-mile revenue than would accrue under the rate of \$1.70 from the Black Mountain mines over its rails.

In view of the prevailing adjustment of rates from mines on the Wasioto & Black Mountain branch through Corbin and from the Black Mountain district through Bulls Gap, we are of the opinion that \$1.95 a ton from Black Mountain to Atlanta over the rails of the Louisville & Nashville and Southern railways is not such a rate as can stand in the light of the general rate conditions. The Black Mountain district is entitled to and should have an outlet for its coal

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by way of the Louisville & Nashville at a rate that will be in fair harmony with rates published by the Louisville & Nashville from other mines equally distant from Atlanta and with the rates published and maintained by the Southern Railway. Under the conditions here shown to obtain we think the Louisville & Nashville should meet the \$1.70 rate through Bulls Gap either over its own rails through Corbin or by arrangement with the Southern Railway to take the coal at Cumberland Gap. We are not disposed to say at this time over which of these alternative routes the rate of \$1.70 should be made applicable, but we shall expect the Louisville & Nashville promptly to present to us a tariff complying with the views herein expressed. In case of the failure to put that rate in effect over one of these routes within 60 days of the date of service hereof, the matter will have further consideration on the present record with a view to the entry of an appropriate order.

We come now to a consideration of that portion of the petition before us which concerns the rate on coal from the Black Mountain district to Norfolk delivered to vessels destined to points outside the capes of Virginia. The rate complained of is \$1.74 per gross ton, which is alleged to be discriminatory when compared with the rate of \$1.40 applying from Norton and from mines on the Clinch Valley division of the Norfolk & Western Railway Company. Upon the theory that the entire Appalachia field from St. Charles to Dante should be treated as a unit for rate-making purposes, the complainant urges the extension of the rate from Norton, approximately midway between the eastern and western extremities, to include the mines in the St. Charles district, 35 miles distant. The complainant asserts that it is the duty of the carriers operating between Black Mountain and Norfolk to provide a rate which will permit the movement of coal to tidewater in competition with coal from the Norfolk & Western mines in the eastern section of the Appalachia field, and that the question whether the rate from those mines is high or low, reasonable or unreasonable, is immaterial. The Norfolk & Western, on the other hand, maintains that it has gone to the utmost limit in providing a rate of \$1.40 from mines located upon its own rails, and that it can not in reason be required to assume the burden of paying out of this rate the cost of transporting coal to Norton from mines not located upon its own rails.

As stated, the distance from St. Charles to Norton is approximately 35 miles, and the rate by way of the Virginia & Southwestern or Louisville & Nashville is 84 cents per gross ton. Norton is the terminus of the Clinch Valley division of the Norfolk & Western Railway and is 472 miles from Lamberts Point, Norfolk. Under the rate of \$1.40 per gross ton the Norfolk & Western receives a

return of 2.96 mills per gross ton-mile, or, at the equivalent rate of \$1.25 per net ton, a return of 2.65 mills per net ton-mile. The through rate of \$1.74 from St. Charles yields a per gross ton-mile revenue of 3.43 mills, or 3.05 mills per net ton-mile. If the rate of \$1.25 per net ton is extended beyond Norton to St. Charles and the Norfolk & Western is required to divide with its connections upon the basis of their present proportion of 30 cents per net ton, the ton-mile revenue of the former would be reduced to 2 mills. The major part of any reduction in the through rate would, therefore, necessarily be borne by the carriers operating west of Norton.

The history of the present rate structure from points on the Clinch Valley division of the Norfolk & Western, briefly, is as follows:

Prior to the year 1908 the rate from the coal mines on that division of the Norfolk & Western to Norfolk was 10 cents per ton higher than the Pocahontas rate. This condition led to the complaint of the *Raven Red Ash Coal Co. v. N. & W. Ry. Co.*, 13 I. C. C., 230, and by our order in that case we required the respondent to divide the Clinch Valley division for purposes of coal rates into two groups, the eastern group to be accorded the Pocahontas rate. This reduction of 10 cents per ton was required to be made from points as far west as Finney, 59 miles from Graham, in West Virginia, the junction point between the Clinch Valley division and the main line. The rate from the mines between Finney and Norton, in what became known as the Clinch Valley district No. 2, remained 10 cents above the Pocahontas rate.

Shortly thereafter the Virginian Railway published the Pocahontas basis of rates from its mines in West Virginia on the same character of coal as was produced in the Clinch Valley district, and the Carolina, Clinchfield & Ohio Railway was completed and established lower rates to the southeast than obtained from the Norfolk & Western mines. As a result of these competitive conditions the rates from Clinch Valley district No. 2 were reduced 10 cents per ton and the entire field placed upon the Pocahontas basis.

In 1905, prior to the development of the Black Mountain field, the Norfolk & Western and the Virginia & Southwestern entered into an agreement whereby the latter company acquired the right to operate its trains over the rails of the former between Norton and Toms Creek. The rates then published by the Virginia & Southwestern from the Toms Creek mines were 10 cents per ton higher than from other mines in that section, but, following the decision of the Commission in *Black Mountain Coal Land Co. v. Southern Ry. Co.*, 15 I. C. C., 286, the Black Mountain and Toms Creek districts were placed upon a parity with mines at and near Appalachia on coal

destined to points in the southeast. The agreement between the Norfolk & Western and the Virginia & Southwestern precluded the latter from engaging in the transportation of coal from mines between Toms Creek and Norton, and the rates from those intermediate mines were therefore higher than from Toms Creek. This led to an informal complaint by the Barrowman Coal Corporation, which was adjusted by a reduction in the rates from the intermediate points to the Toms Creek basis. The Norton rate on tidewater coal has therefore been made applicable from mines on the Toms Creek branch of the Norfolk & Western, but in no case does the rate apply from mines not reached directly by the rails of that carrier.

The complainant concedes that \$1.40 per gross ton is a low rate for the service from Norton and Toms Creek, but argues that if the Norfolk & Western assumes the cost of assembling the coal on the Toms Creek branch and carries it to Norfolk at that rate it should be willing to accept less than \$1.40 when the coal is assembled by some other carrier and delivered to it at Norton. It is shown, for example, that out of a rate of \$1.40 to tidewater at Charleston the Virginia & Southwestern absorbs the cost of bringing the coal to its rails at Appalachia, amounting in some instances to as high as 23 cents per ton. The complainant therefore urges that the Norfolk & Western could reasonably absorb a like amount in bringing the Black Mountain coal to Norton. Obviously, it does not follow as a matter of course that because the Virginia & Southwestern elects to participate in the transportation of coal to Charleston under an arrangement of that kind that the Norfolk & Western must do likewise on coal destined to Norfolk. As a matter of fact, little or no coal seems to move to Charleston under the \$1.40 rate by reason of the lack of dock facilities at that point, and the rate on commercial coal is much higher, being at this time \$2.05 per ton.

It seems clear to us that we can not upon any theory hold that a rate yielding but 2.65 mills per net ton-mile is unreasonably high, and that we can not require the Norfolk & Western to shrink an admittedly low rate for the purpose of bringing to its rails coal from mines not served by it. Nor do we see any foundation for a charge of unjust discrimination against the Norfolk & Western because of the rate structure that obtains in the Appalachia field. It is true that that carrier has united by means of joint rates and trackage arrangements with others serving the same field under which the mines upon its rails are upon a rate parity with those in the western part of the field on coal destined to the southeast. For its services the Norfolk & Western receives 15 cents per ton for a maximum haul of 24 miles. It is also true that when necessary the Virginia & Southwestern and Southern Railway absorb the charges of their connections on coal

consigned to points in southeastern territory. But these facts do not justify a requirement by this Commission that the Norfolk & Western shall so extend its rates as to make local to its line the mines in the entire Appalachia field. It is the misfortune of the complainant that its property is upon the extreme western border of the southwest Virginia coal field, but the disadvantage it is under with respect to the rate east to Norfolk does not obtain on shipments to Carolina territory, including tidewater coal at Charleston, nor does it obtain on shipments destined to points in the west where, on the contrary, the disadvantage is against the balance of the Appalachia field.

The testimony regarding the reasonableness of the rate between Black Mountain and Norton is conflicting. A witness for the complainant insists that the charge should not exceed 15 or 20 cents per ton, the Virginia & Southwestern argues that 30 cents should be the minimum charge, and the Louisville & Nashville attempts to justify the present rate of 34 cents. The latter rate yields a return of 9.7 mills per gross ton-mile, and when applied to the initial portion of the through movement to Norfolk, contributes, as we conclude and find, to make the present through charge unduly discriminatory. As stated above, for transporting coal a distance of 24 miles from mines on its rails in the Appalachia district to connecting lines the Norfolk & Western receives 15 cents a ton. Upon a careful consideration of the record we are of the opinion, and so find, that the rate on bituminous coal from the Black Mountain district to Norfolk, when for delivery to vessels destined to points outside the capes of Virginia, should not for the future exceed the rate from Norton, applicable contemporaneously on like traffic, by more than 20 cents per gross ton.

An order will be entered in conformity with our conclusions herein.

No. 4743.

C. PARDEE WORKS

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY ET AL.

Submitted October 29, 1915. Decided April 27, 1916.

Upon the facts shown of record, *Held*, That the defendants' present rate adjustment gives to the competitors of the complainant an undue and unreasonable preference and advantage to the prejudice and disadvantage of the complainant.

A. B. Hayes, W. A. Glasgow, jr., and McLanahan, Burton & Culbertson for complainant.

H. J. Hart and S. S. Perry for New York, New Haven & Hartford Railroad Company; Boston & Maine Railroad; Maine Central Railroad Company; and Central Railroad of New Jersey.

REPORT OF THE COMMISSION ON REHEARING.

HARLAN, *Commissioner*:

The rates that are again under consideration here are those charged for the carriage of iron and steel articles between Perth Amboy, in the state of New Jersey, and points in the New England states. Although it is alleged that these rates are unreasonable *per se* and also discriminatory, reparation being asked, the real question raised upon the record is whether the complainant suffers an undue disadvantage through the present grouping of Perth Amboy with certain competitive manufacturing points. Upon the original record the allegations of the complaint were not sustained by the evidence adduced and the complaint was therefore dismissed. *Pardee Works v. C. R. R. Co. of N. J.*, 29 I. C. C., 500. Upon this hearing, however, a more comprehensive showing has been made.

As explained in the original report, the complainant is engaged in the manufacture of steel billets, bars, and other iron and steel articles at Perth Amboy, 22 miles distant from New York City. In its manufacturing process scrap iron is used as a raw material, the source of supply being the New England states, the so-called metropolitan district, Buffalo, Syracuse, and other points, in the states of New York, New Jersey, and Pennsylvania. The billets, bars, and other products of the complainant's industry are marketed principally in New England and the Atlantic seaboard territory.

For the purpose of making rates on scrap iron and on billets, bars, and other iron and steel articles to and from the New England states, Perth Amboy is in a group extending from Jersey City on the east to the Susquehanna River on the west. Central Pennsylvania is similarly grouped between the Susquehanna River on the east and Donahoe on the west; and a third group is made of points in western Pennsylvania and eastern Ohio between Greensburg on the east and the Ohio River on the west. The width, east and west, of each group, as shown in the mileage of the Pennsylvania Railroad, is as follows:

Group.	From—	To—	Miles.
Eastern.....	Jersey City, N. J.....	Duncannon, Pa....	210
Central.....	Juniata Bridge, Pa.....	Donahoe, Pa.....	193
Western.....	Greensburg, Pa.....	Bellaire, Ohio.....	125

The present rates, including the increase authorized in *The Five Per Cent Case*, 32 I. C. C., 325, are shown in the following table:

Between New England and—	Billets, C. L., per gross ton.	Bar steel, in cents per 100 pounds.		Scrap iron, C. L., per gross ton.
		C. L.	L. C. L.	
Eastern group.....	\$2.42	14.2	21.0	\$2.42
Central group.....	2.86	17.4	23.1	2.86
Western group.....	3.16	18.9	25.1	3.16

In an exhibit introduced by the complainant, the accuracy of which is not questioned, the rates in issue were measured by car-mile and ton-mile units, and in that particular show the following comparison:

Between New England and—	Billets.		Iron and steel.	
	Car-mile.	Ton-mile.	Car-mile.	Ton-mile.
Perth Amboy.....	<i>Cents.</i> 32.53	<i>Mills.</i> 13.01	<i>Cents.</i> 27.20	<i>Mills.</i> 15.11
Pennsylvania groups.....	17.75	7.10	15.01	8.34

While not lacking in significance, this comparison merely discloses the revenue yield under the published rates without regard to the actual movement of the traffic or its density; and the same is true of other exhibits of record showing the rates on different commodities for comparable distances.

Although the complainant competes with manufacturers in all three groups, its principal competitors are in the large eastern group, the more distant competing mill in that group being at Harrisburg, 178 miles from Jersey City and 157 miles from Perth Amboy. The

competing mills in that group are on a rate equality in drawing scrap iron from, and marketing their products in, the New England states. They are also on a rate parity with respect to iron and steel to, and scrap iron from, Buffalo and Syracuse rate points. No such rate equality, however, is maintained with respect to other articles of commerce. On general class and commodity traffic Perth Amboy and adjacent points, forming a much narrower group, take rates that reflect their proximity on the one hand to New England and their distance on the other hand from the western points of consumption. The parity of rates, that Harrisburg enjoys with Perth Amboy on iron and steel to the New England markets, is not extended by the defendants even to coal and limestone, two raw materials largely used in the manufacture of iron and steel. On coal from the Fairmont district of West Virginia to eastern group points the rates grade up with distance, Harrisburg and Perth Amboy paying, respectively, \$1.55 and \$2.10 per ton. Substantially a similar scale applies on coal from the western Pennsylvania fields and also on limestone from the same territory. Broadly speaking, the rates on all traffic, other than iron and steel, grade with distance between Perth Amboy, and near-by points, on the one hand and the official, western, and southern classification territories on the other. From Perth Amboy to points in the three groups and also to the territory west of Pittsburgh the grading of rates with distance is applied even to the iron and steel traffic, Bethlehem, Harrisburg, and points west being on a lower basis than Perth Amboy. Under the present adjustment, as thus appears, the complainant's competitors operating in the eastern group are given access to the New England states upon a rate equality with the complainant, both with respect to scrap iron and the manufactured product, while the complainant is not likewise given access, upon an equal rate basis with these same competitors, either to the points from which its coal and limestone are obtained or on its manufactured products to the western markets.

It is urged with some force that Perth Amboy, being right at the door of the New England states, should not be deprived of the advantage of its location by being grouped with more distant competing points when, conversely, the advantage in location of the latter points to the western markets is fully recognized in their rates. The complainant finds no fault with the grading of rates with distance or with the group method of making rates within reasonable bounds; but it seriously objects to the present adjustment because, while ignoring the disadvantage of the location of its competitors at the far end of a 210-mile group, when they seek to enter the New England markets with their products, the adjustment fails to make a like concession by ignoring the disadvantage of the

complainant's location when it seeks to enter the western markets in competition with the Harrisburg and other mills in the same group. The complainant also objects to being grouped with those mills on steel and iron to the New England markets while being denied a similar rate parity with them on coal and limestone, which all must use in making their steel and iron.

Twenty-five different rail lines, the majority of which serve the Pennsylvania groups, were made parties defendant to the complaint. Aside, however, from the Central Railroad of New Jersey, only the New England lines were represented at the hearing, and in behalf of these lines it was explained of record (a) that the rate adjustment here attacked was not made with any relation either to the rate per ton-mile or per car-mile, but was based on the rates to and from Pittsburgh, as is also the selling price of the manufactured product; (b) that the adjustment has been maintained without complaint since about 1897, and by including a large territory, so far as points of origin are concerned, it had the effect of equalizing and putting on a parity all the manufacturers in that territory, with like effect upon the New England dealers; (c) that the result of the rate parity is to permit open competition in every direction; (d) that the rates are not unreasonable *per se*, because they act to give all the manufacturers access to the same territory at precisely the same figure; and (e) that to create an equalization any reduction in the rate from Perth Amboy would carry with it reductions from New York to New England and from all points to and from New England. In other words, it appears from the testimony that the controlling consideration in fixing the boundaries of these rate groups was a desire on the part of the defendants to stimulate the movement of traffic in all directions by developing competition in a large territory. It is generally conceded that a broadening of competitive fields in this way is often helpful, both in the development of commerce and in the development of traffic; but when carriers on their own initiative and with the desire to stimulate the movement of traffic in all directions undertake to lay aside transportation conditions and to create a rate relationship based largely, if not altogether, on commercial factors, they must do it consistently so as to avoid artificial and undue advantages for some shippers to the prejudice and disadvantage of others. It should be obvious that the defendants can not consistently hold open the New England markets to the competitors of the complainant in the eastern group while denying to the complainant access to the western markets on an equal rate basis with these same competitors; nor should the defendants keep the complainant under a like disadvantage, as compared with mills in the western part of the group in question, with respect to the raw materials used in the manufacturing process.

Upon the more extended showing made by the complainant on the record now before us, we conclude and find that the present rate adjustment gives to the complainant's competitors an undue and unreasonable preference and advantage to the prejudice and disadvantage of the complainant within the meaning of the act.

Without entering an order at this time we shall expect the defendant carriers to rearrange the present routes and rates in a manner that will remove the unreasonable preferences and advantages here found to exist, and to submit such rearrangement to the Commission for its approval on or before July 1, 1916. Until this is accomplished the record will be held open for such order or orders as may be necessary.

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INVESTIGATION AND SUSPENSION DOCKET No. 717.
HAY MINIMUM WEIGHTS.

Submitted February 26, 1916. Decided April 28, 1916.

Proposed increase of carload minimum weights for hay shipped from points in the Pecos Valley of New Mexico to various destinations in Texas and Louisiana justified in part.

W. C. Reid, R. C. Reid, J. Brinker, and F. E. Heafer for Atchison, Topeka & Santa Fe Railway Company; Panhandle & Santa Fe Railway Company; and Gulf, Colorado & Santa Fe Railway Company.

M. S. Groves, Hugh H. Williams, O. L. Owen, and B. F. Seggerson for State Corporation Commission of New Mexico and Frank Talmage.

Geo. T. Atkins, jr., for Kalmbach-Ford Company, Limited, and Shreveport Chamber of Commerce.

Ed. S. Gibbany for Pecos Valley Trading Company and R. E. Levers Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedule filed to take effect October 1, 1915, respondents proposed to increase the minimum carload weights for hay shipped from points on the Atchison, Topeka & Santa Fe Railway in the Pecos Valley of New Mexico to various destinations in Texas and Louisiana as shown in the following table:

Length of cars (inside measurements).	Minimum weights.	
	Present.	Proposed.
34 feet and under.....	17,000	20,000
Over 34 feet, but not including 36 feet.....	20,000	20,000
36 feet to and including 36½ feet.....	20,000	22,000
Over 36½ feet to and including 42 feet.....	20,000	24,000
Over 42 feet.....	20,000	30,000

Upon protests by shippers of alfalfa hay at various points in New Mexico, Texas, and Louisiana, and by the State Corporation Commission of New Mexico, the schedules were suspended until January 29, 1916, and later until July 29, 1916. The suspended schedules

would govern the movement of all kinds of hay from and to the points involved, but alfalfa hay is the commodity primarily affected, and all of the evidence introduced at the hearing referred to the transportation, sale, and consumption of alfalfa hay. The term "hay," as used herein, accordingly signifies only alfalfa hay.

The Atchison, Topeka & Santa Fe Railway, which originates this traffic, assumed the burden of proof. Its representative testified that the present minima were unjustifiably low, and that 17 railroads, representing 11 of the important systems in Louisiana and Texas, had notified it that they would withdraw their concurrences in the through rates unless the minimum weights were increased to the basis of the minima applicable on shipments of hay to Texas and Louisiana from other points. The minima here proposed are the same as the minima applicable on hay to Texas and Louisiana from Colorado, Kansas, and Nebraska, and other points. Respondents contend that the proposed minima can be loaded with ease if hay is baled to a density ranging from 60 pounds to 65 pounds per bale instead of from 50 pounds to 55 pounds, as at present.

The ordinary hay press has a compress chamber 14 inches by 18 inches and produces a bale of hay from 30 inches to 42 inches long. But these dimensions are not attained in practice and there is a notable lack of uniformity in the size of the bales shipped. A process of expansion takes place after the bale comes from the press that increases its dimensions, according to the grade and condition of the hay and the pressure to which it has been subjected. There is also a lack of uniformity in the density of the bales, and both the number of bales and the total weight loaded into cars of certain dimensions vary appreciably also.

Protestants contend that the existing minima frequently can not be loaded under present conditions and that the proposed minima would only increase an existing burden. The trade in certain parts of Louisiana and Texas is said to require light and bulky bales. Heavy bales are said to be subject to damage by overheating. It is also stated that hay is bought by the ton and sold by the bale and that heavier bales will cause objections to the increased prices and the shipment of hay from producing points from which lower minima apply. The minima on intrastate traffic in Texas are shown to range from 14,000 pounds for small cars to 17,000 pounds for cars over 36½ feet in length. Hay is grown in large quantities in west Texas and the Mesilla Valley of New Mexico and competes with hay grown in the Pecos Valley. But tariffs have been filed with the Railroad Commission of Texas increasing the minimum weights applicable to intrastate traffic to the basis proposed in this proceeding. These

tariffs have been suspended, and a hearing has been had, but no findings have yet been reported. The minima applicable from the Mesilla Valley to interstate destinations are the same as the minima now applicable from the Pecos Valley, but respondents are merely awaiting the outcome of this proceeding before attempting to make increases.

Several farmers who reside in the hay-producing section of the Pecos Valley appeared as witnesses on behalf of respondents and testified that hay could be baled easily to a density ranging from 60 pounds to 65 pounds and more, and that they preferred the heavier bales on account of the lower cost of baling and the economy of storage room. Other witnesses, members of the Hagerman Alfalfa Growers' Association of Hagerman, N. Mex., an organization composed of hay growers and which shipped about 500 carloads of hay during the 1914 season, expressed the opinion that an increase in the weight of the bales to an average ranging from 60 pounds to 65 pounds would permit loading to the proposed minima, except in cars 34 feet and under in length and perhaps in cars over 36½ feet in length up to but not including 40-foot cars. Their opinion is substantiated by exhibits filed by protestants and respondents covering actual shipments which show that hay compressed to an average density of 60 pounds per bale can be loaded to the proposed minima in all cars, except cars 34 feet long or less.

Protestants distinguish commercial minima from physical minima and urge that the commercial minima should be used instead of the physical minima. When a dealer orders a car of hay, he usually specifies the size car desired. Some dealers ask for a guaranty of so many bales to the ton. If the hay is baled heavier than the guaranty, the consignor is docked the excess weight per bale. Respondents argue and several growers of hay agree that light, bulky bales are demanded because hay is bought by the ton and sold by the bale, and that bales of less density and consequently of less weight tend to promote fraud upon the consumer. This charge, however, is not sustained by the evidence.

In *Kansas City Hay Dealers' Asso. v. M. P. Ry. Co.*, 14 I. C. C., 597, 602, we observed that—

In *National Hay Association v. L. S. & M. S. Ry. Co.*, 9 I. C. C. Rep., 272 (1902), bales of hay are referred to as weighing on the average from 80 to 90 pounds. In *Wiemer v. C. & N. W. Ry. Co.*, 12 I. C. C. Rep., 462 (1907), to which reference has been made, it is said that the average weight is from 75 to 80 pounds. In this case (1908) the average seems to be about 65 pounds.

The situation presented was quite like the situation now presented. The carriers maintained minima on the same basis as pro-
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posed here, except that the minima for cars under 30 feet and up to and including 34 feet ranged from 16,000 pounds to 19,000 pounds. No changes were ordered except for certain equipment having a height of 6 feet 9 inches or less. A minimum of 17,500 pounds was prescribed for cars of this height and 34 feet or less in length; with a minimum of 20,000 pounds for cars of the same height, but 36 feet long. The official equipment register shows that many Atchison, Topeka & Santa Fe cars, 34 feet or less in length, are 6 feet 9 inches or less in height, and the equipment owned by this carrier appears to be representative.

We find that the minima proposed have been justified, except for cars 34 feet or less in length, and that a minimum of 17,500 pounds is a reasonable minimum for such cars. Respondents will be expected to revise their tariffs in accordance with these findings, and upon satisfactory showing that this has been done the order of suspension will be vacated.

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No. 6901.
NAVASSA GUANO COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

Submitted September 14, 1915. Decided April 28, 1916.

Original decision that a claim for reparation filed more than two years after the date on which the shipment was delivered, including the date of delivery, was barred by the statute of limitations, affirmed on rehearing, and complaint dismissed.

H. W. B. Glover for complainant.

No appearance for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION :

This case was decided originally on April 1, 1915. The complaint attacks as unreasonable defendants' charges for the transportation of a carload of ground dried blood from Milwaukee, Wis., to Wilmington, N. C. We found in our original report that the shipment was delivered to the consignee's plant at Wilmington September 27, 1911, and that as no complaint was filed until September 27, 1913, the claim was barred by the statute of limitations. Complainant filed a petition for rehearing on June 23, 1915, which was granted, but only for the admission of evidence relative to the date and exact time of delivery. Rehearing was had and the case is now before us on the whole record.

No evidence has been introduced tending to show that the shipment was delivered to the consignee's plant subsequently to September 27, 1911. The only witness who appeared for complainant at the last hearing admitted that the shipment was placed at the consignee's plant on September 27, 1911, as he could not prove anything to the contrary. Complainant contends, however, that as the car was placed on the siding at 5.15 p. m., September 27, 1911, and informal complaint was filed with the Commission on September 27, 1913, presumably before 5.15 p. m., the claim is not barred. But fractions of a day are not considered in computing periods of limitation, and in any event the two-year period allowed to complainant expired on September 26, 1913.

We find nothing to justify any modification of our original conclusion, and the complaint accordingly will be dismissed.

HARLAN, *Commissioner*, concurring:

The right to recover damages on account of a rate alleged to be excessive and therefore unlawful is subject to a provision in section 16 of the act to regulate commerce, as follows:

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after.

In *Blinn Lumber Co. v. So. Pac. Co.*, 18 I. C. C., 430, it was held that the bar of this provision commences to run, not from the time when the shipper pays the rate, but from the time when the law imposes upon him the obligation to pay it, namely, upon the delivery of the shipment to him at destination.

In the case before us here upon rehearing the shipment was delivered to the complainant on September 27, 1911. The complaint alleging the unreasonableness of the rate then in effect was filed on September 27, 1913, or two years and one day by the calendar after the date on which the delivery was made. In the original unreported opinion the Commission, following the rule laid down in *West Texas Fuel Co. v. T. & P. Ry. Co.*, 15 I. C. C., 443, held that the claim was barred by the lapse of time. The complainant now contends, however, that, in calculating the two-year period, the day on which the delivery of the shipment was made to it by the defendant, namely, September 27, 1911, should have been excluded and that, if that day be excluded, its complaint, filed on September 27, 1913, was not barred but was within the period of limitation provided in section 16.

The trend of the more recent decisions by the courts is to exclude the day on which the cause of action accrues. The reason for this view is tersely explained by Sir William Grant in *Lester v. Garland*, 15 Vesey, 248, as follows:

Our law rejects fractions of a day. The effect is to render the day a sort of indivisible point, so that any act done in the compass of it is no more referable to any one than to any other portion of it; but the act and the day are coextensive, and therefore the act can not be said to be passed until the day is passed.

There is respectable authority, however, for including the first day and excluding the last day in determining whether an action has been brought within the period of time allowed by law; and, in view of this difference of opinion among the courts, I am content to adhere to our own practice, of some years standing, of including the day of the shipment's delivery in ascertaining whether a complaint seeking reparation has been filed within the period provided by the act that we are administering. I therefore concur in the finding and order of the Commission herein.

INVESTIGATION AND SUSPENSION DOCKET No. 718.
SOUTHERN CLASSIFICATION RATINGS.

Submitted January 17, 1916. Decided April 28, 1916.

Proposed changes in the descriptions and class ratings of machine-finished sprocket chains, iron or steel pipe, riveted, stick licorice, ice-making machinery, and popped corn confectionery, in southern classification territory found justified.

R. Walton Moore and *Frank W. Gwathmey* for all respondents.
Frank E. Spencer for American Spiral Pipe Company.
Julius A. Hafner, *John S. Burchmore*, and *Luther M. Walter* for Rueckheim Brothers & Eckstein and Shotwell Manufacturing Company.
Myers & Gates for Indianapolis Chamber of Commerce, Diamond Chain Company, Whitney Manufacturing Company, and Baldwin Chain & Manufacturing Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This investigation covers certain items in the southern classification, filed to take effect October 1, 1915. The items propose changes in the descriptions and ratings of certain articles. They were protested by manufacturers of the articles and were suspended until July 29, 1916. We shall consider the several articles separately.

SPROCKET CHAINS.

The present descriptions and ratings, so far as they are pertinent, are as follows:

Chains:	Class.
Automobile or bicycle, belting or sprocket, in barrels or boxes, L. C. L.	4
* * * * *	
Chains, not otherwise indexed by name:	
Belting or sprocket:	
* * * * *	
Steel:	
* * * * *	
In barrels, boxes, or on reels, L. C. L.	4

The proposed classification of chains reads, in part, as follows:

Belting or sprocket:

*	*	*	*	*	*	*
Steel:						Class.
¹ Machine finished, see note, in barrels or boxes.....						2

NOTE.—Rating applies on machine finished block, gear, or roller chains such as are used for power transmission on automobiles, bicycles, or machinery.

Other than machine finished:

*	*	*	*	*	*	*
In barrels, boxes or on reels, L. C. L.....						4

The record in Investigation and Suspension Docket No. 726, *Classification of Chain*, relative to proposed changes in the rating of steel belting or sprocket chains in western classification, was filed as an exhibit in this proceeding. There is, however, a difference between the changes proposed in the western classification and in the southern classification, in that the western classification proposes no change in the rating on automobile, bicycle, and motorcycle belting or sprocket chains, whereas the southern classification proposes to increase the rating on these articles from fourth to second class. Both classifications propose changes in the descriptions of the articles. The proposed descriptions were suggested by the Committee on Uniform Classification.

Protestants insist that their machine-finished steel belting or sprocket chains should not be rated higher than third class in the southern classification. Their reasons are that they have been rated fourth class for many years; that the proposed advance in rating from fourth class to second class would increase the rates applicable in some instances by as much as 75 per cent; that malleable-iron belting or sprocket chains are rated fifth class, the fourth-class rate rising as high as 32 per cent above the fifth-class rates; and that the machine-finished chains made by protestants are heavier per cubic foot than other chains. Respondents reply that the fourth-class rating was and is too low for articles as valuable as machine-finished steel belting or sprocket chains and that move in as small volume; that the percentage of increase in the rates would seem large, but that the chains are ordinarily shipped in comparatively small packages, so that the actual increase in the rates would be inconsiderable when the value of the chains is considered, apparently about \$28 per 100 pounds on an average; that the fifth-class rating on malleable-iron belting or sprocket chains may be too low, and that the fairest grading which respondents could propose would rate steel belting or

¹ The item suspended.

sprocket chains, other than machine finished, fourth class; automobile tire chains, third class; the chains involved, together with chains of copper, brass, or bronze, second class. Respondents justify this graduation on the ground that it conforms to the relative values of the articles rated and the relative volume of movement. These elements are said not to be offset by competition between protestants' chains and other articles. The cheaper types of chain belting may be substituted for machine-finished steel belting or sprocket chains, but respondents insist that each type of chain has its specific uses and that there is no real competition between the several types. The weights of protestants' chains are compared with the weights of other chains, but all of the chains cited are heavy, and we are not persuaded that mere differences in weight should determine their classification.

Protestants admitted at the hearing that their particular grade of chain should be rated something higher than the ordinary malleable-iron sprocket chain. The rating proposed would apply equally, however, to protestants' machine-finished belting or sprocket chains, and on chains which protestants state are as much superior to them as protestants chains are to the malleable-iron chains. Protestants' own exhibits indicate an average value of about 25 cents per pound for their chains, some of their cheaper chains selling for about 18 cents per pound and the more expensive varieties for more than 50 cents per pound.

The second-class rating proposed for machine-finished steel belting or sprocket chains is not too high. The southern classification has long rated link chains of copper, brass, and bronze, and tools and hardware, second class.

We find that respondents have justified the ratings proposed on machine-finished belting or sprocket chains.

IRON OR STEEL PIPE, RIVETED.

The present description and ratings are:

Pipe:	Class.
Iron or steel, riveted or spiral weld, L. C. L.	4
Same, C. L. (minimum weight, 24,000 pounds)	6

The descriptions and ratings under suspension are as follows:

Pipe:		Class.
• • • • • • •		
Iron or steel, riveted, lock joint or spiral weld:		
Plate or sheet:		
S. U., U. S. standard gauge No. 16 or thicker:		
Inside diameter over 48 inches, nested or not nested, loose		
or in packages, L. C. L.	1½	
Inside diameter over 24 inches and not over 48 inches:		
Not nested, loose or in packages, L. C. L.	1	
Nested, in bundles or crates, L. C. L.	2	

Pipe—Continued.

Iron or steel, riveted, lock joint or spiral weld—Continued.

Plate or sheet—Continued.

S. U., U. S. standard gauge No. 16 or thicker—Continued.

Inside diameter 24 inches or less:		Class.
Not nested, loose or in packages, L. C. L.	-----	1
Nested, in bundles or crates, L. C. L.	-----	3
S. U., thinner than U. S. standard gauge No. 16, any diameter, nested or not nested, loose or in packages, L. C. L.	-----	1½
S. U., nested or not nested, loose or in packages, straight or mixed C. L., minimum weight 20,000 pounds.	-----	5

Respondents urge that many articles included under the description "pipe, iron or steel, riveted, lock joint or spiral weld," are light and bulky and can not be loaded to the present minimum of 24,000 pounds. The same thing apparently is true of most of the articles embraced in this description.

Only one manufacturer appeared against the application of the proposed ratings. His product is pipe, iron or steel, spiral riveted, and is embraced by the description given above. Spiral riveted steel pipe is made in great quantities, but apparently it is all made by three or four manufacturers. It is generally of heavier gauge than other riveted pipe and readily loads above 24,000 pounds in the standard car. Because of the spiral riveting, it is specially adapted to withstand great internal pressure; as the gauge of metal used increases with the diameter of the pipe, the loading is about the same per unit of space.

We find that respondents have justified the proposed increased ratings on pipe, iron or steel.

STICK LICORICE.

The suspended item reads as follows:

Licorice (licorice extract):		Class.
* * * * *		
Stick, in barrels or boxes	-----	1

No one appeared at the hearing in support of the protest filed by the National Licorice Company, of Brooklyn, N. Y., which alleged that fully 90 per cent of the shipments of so-called stick licorice are really a licorice confectionery made in imitation of licorice sticks and worth about 6½ cents per pound. Respondents state that real stick licorice formerly took the first-class rating on drugs, and that licorice confectionery in barrels or boxes has always moved, and still moves, at third-class rates.

The change proposed apparently is a mere change in description without any change in rating, and we find that respondents have justified it.

ICE-MAKING MACHINERY.

The proposed ratings on ice-making machinery were suspended upon the protest of the Refrigerating Machinery Club, an organization of 39 manufacturers of refrigerating machinery, with plants throughout the country. Five of these manufacturers are located in Chicago, Ill., where the hearing was had and where the attorney for the ice-making machinery manufacturers has his office. No appearance was entered for protestants and no attempt was made to establish the allegations of their protest.

The present descriptions and ratings are as follows:

Covers:

Ice can, cork:	Class.
In boxes or crates, L. C. L.-----	1
In bundles, L. C. L.-----	D1
Ice can covers or ice can tops, wooden, in boxes, bundles or crates, L. C. L.---	3
In packages named, straight or mixed C. L., minimum weight 20,000 pounds -----	5
Ice molds (cans), iron or steel, for ice making:	
Loose, L. C. L.-----	1
Not nested, in boxes or crates, L. C. L.-----	1
Nested, in boxes, bundles or crates, L. C. L.-----	3
Nested or not nested, loose or in packages, C. L., minimum weight 20,000 pounds-----	6
Machinery and machines:	
Ice making machinery, not otherwise specified, L. C. L.-----	3
Ice making machinery and parts of ice making machines, straight C. L., or in mixed C. L. with necessary equipment of iron or steel ice molds (cans), minimum weight 24,000 pounds, subject to note 3.---	6
[Note 3 refers to fittings, power equipment, or power transmission appliances which may be mixed in carloads with machines made subject to note 3.]	

It is not necessary to set forth in detail all of the items proposed under the heading of "machinery and machines, ice-making or refrigerating." One of these items involves a reduction in the less-than-carload rating on cork ice-can covers, in bundles, while 10 of them continue the third-class less-than-carload rating now in effect on certain machinery for refrigerating, the changes being merely in the wording of the specifications. It is also unnecessary to detail the descriptions of straight and mixed carloads of refrigerating machinery, minimum weight 24,000 pounds, rated sixth class. These descriptions appear only to change the rating on wooden ice-can covers from fifth class, minimum weight 20,000 pounds, to sixth class, minimum weight 24,000 pounds, and to extend the mixing privilege to practically all kinds of ice-making machinery. Considering only the particular less-than-carload items noted in the protest mentioned, we may group the proposed changes as follows:

(1) Increases in the ratings from third class to second class on ammonia or carbonic compressors, ammonia or carbonic pumps, 39 I. C. C.

loose or on skids; on ammonia condensers, equalizers, or exchangers, in boxes, bundles, or crates; on brine agitators, brine propellers, in boxes or crates; on brine or water-cooling coils or freezing plates, in boxes, bundles, or crates; on ice-can dumps or thaw basins, in boxes or crates; on ice-can fillers, in boxes or crates; on ice cutting or sawing machines, loose or on skids; and on ice tilting tables, in boxes or crates.

(2) Increases in the ratings from third class to first class on brine coolers, shell, loose or on skids; on brine or water-cooling coils or freezing plates, loose or on skids; on ice-can dumps or thaw basins, loose or on skids; on ice tilting tables, loose or on skids; and on water-cooling tanks, reboiling or skimming tanks, loose.

The ratings proposed are lower generally than the ratings now given similar articles in the official and western classifications. Respondents state that the descriptions proposed were suggested by the Committee on Uniform Classification; that the articles upon which it is proposed to increase the ratings are of complicated structure and occupy much space in proportion to their weight; that the ratings are the same as the present ratings of similar parts of other types of machines; and that the proposed ratings are graded to give due consideration to the condition of the articles offered for transportation, with respect to whether they are set up, loose or on skids, or knocked down and crated or boxed.

We find that respondents have justified the proposed changes in description and increases in the ratings upon ice-making or refrigerating machinery.

POPPED CORN CONFECTIONERY.

The suspended item reads, in part, as follows:

Popped corn or puffed rice confectionery :	Class.
In cartons in barrels or boxes-----	8

The only question presented is the proposed increase in the rating of popped corn confectionery in cartons in boxes from fourth class to third class. Cartons of popped corn are not shipped in barrels and no objection is made to the rating of puffed rice confectionery, possibly because it is not now an important article of commerce. The item suspended also rates popped corn confectionery in different kinds of packages than those already mentioned, but these ratings were not protested and apparently proposed no changes.

The article made by protestants is a confection consisting of popped corn, coated with a mixture of molasses and sugar, and dried. A small proportion of roasted peanuts is added. To preserve the crispness of the confection it is packed in double thicknesses of waxed

paper in cartons, on which the manufacturer's trade-mark is printed. The cartons are packed in standard fiber box containers holding 50, 100, and 144 packages, and weighing 17, 32, and 51 pounds gross, respectively. Each small package retails for 5 cents. The wholesale price at Chicago is approximately 2.4 cents per package. As shipped, the average weight of the packages is 15 pounds per cubic foot. The confectionery contributes 54 per cent of the weight.

Prior to June 3, 1915, when the Cummins amendment became effective, there was no separate item in the southern classification for popped corn confectionery, but popped corn confectionery was specifically named under the general heading, "confectionery," and when the agreed value shown on the bill of lading was 6 cents per pound or less took fourth-class rates. Protestants' chief witness stated that the average value of popped corn confectionery was and is about 8.5 cents per pound, and that prior to the date specified it was always shipped under the agreement that its value did not exceed 6 cents per pound. For about five years prior to June 3, 1915, the third-class rating would have applied if the true valuation of the shipments had been stated in the bills of lading.

Protestants contend that the third-class rating on popped corn confectionery in cartons in boxes is unreasonable and should not be allowed to become effective. Their reasons are that fourth-class rates have been charged since June 3, 1915, when the specific fourth-class rating was published; that fourth class was the rating applied for many years prior to June 3, 1915, when the shipments moved under an agreed valuation; that, although popped corn confectionery is a light and bulky article weighing only 15 pounds per cubic foot, it is nevertheless more desirable for transportation than many heavier kinds of confectionery, in that it is not readily damaged or pilfered; that the conditions which govern its distribution preclude an increase in rates; that a relationship between confectionery and popped corn confectionery represented by a difference of one class in favor of the latter was approved in *The Western Classification Case*, 25 I. C. C., 442, 508, which involved an increase in the rating of low priced confectionery from third class to second class. Comparison is made with bakery goods in cartons on the basis of values per pound, weights per cubic foot, and methods of packing, and *Portland Chamber of Commerce v. C., M. & St. P. Ry. Co.*, 32 I. C. C., 188 is cited.

We said in *The Western Classification Case*, *supra*:

A large percentage of the low priced confectionery shipped seems to be pop corn or puffed rice confectionery, which in No. 51 is permitted to move * * * in cartons in barrels or boxes, l. c. l., at third class, with the valuation clause removed.

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Taking into consideration the fact that the high-grade candy has been reduced from first to second class and that the third-class rating is still applicable on pop corn confectionery, we are of the opinion that the second-class rating should be allowed to become effective.

But we did not establish or approve any relationship between the rates on candy and on the confection in question. We were concerned largely with the elimination of the valuation clause and found that it was desirable to have a single rating on candy; that the second-class rating approved on candy was a compromise between the first-class rating of high grades and the third-class rating of low grades formerly applicable; and that the rating of popped corn confectionery had not been disturbed.

Popped corn confectionery is somewhat analogous to bakery goods, certain breakfast foods, and the like, but the analogy lies principally in the methods of packing, the light and bulky character of the packages, and the apparent cheapness of the articles as they are sold.

Respondents urge that popped corn confectionery is worth as much as the average cheap candy which moves into the south in large volume; that its weight, as shipped, is much less than the weight of the average cheap candy, approximating that of the lightest candy confections made; that the third-class rating now applied to confectionery is an average of the ratings formerly in effect, graded on the basis of declared values; and that if candy confectionery and popped corn confectionery in cartons, in boxes, may properly be rated differently, candy is entitled to the lower rating.

Local manufacturers of popped corn are protestants' principal competitors. An exhibit filed by the protestants shows that the proposed rating would increase the average of the rates from Chicago to 36 representative destinations in southern territory 17.6 cents per 100 pounds, or about six-tenths of a mill on each 5-cent carton. Protestants assert that this increase would limit the article's distribution in the south, as it could neither be absorbed nor passed on to jobbers, ultimate consumers everywhere expecting to purchase the article at the fixed price of 5 cents per package. The result would be, protestants state, that the local producers of popped corn confections would hold the trade at the more distant points in the south. But this is no reason against an increase in rates. We find that respondents have justified the increased rating proposed on popped corn confectionery in cartons, in boxes.

The orders suspending the operation of these schedules will be vacated.

INVESTIGATION AND SUSPENSION DOCKET No. 723.
COTTON CONCENTRATION AT WELEETKA, OKLA.

Submitted March 11, 1916. Decided May 2, 1916.

Proposed elimination of certain stations from which cotton may be shipped for compression at Weleetka, Okla., justified.

Thomas Bond for respondents.

C. D. Mowen and *E. Gottschalk* for protestants.

J. A. Bond for Sapulpa Compress Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The St. Louis & San Francisco Railroad Company and James W. Lusk, W. C. Nixon, and W. B. Biddle, receivers thereof, by a tariff filed to take effect October 8, 1915, proposed the elimination of stations Scullin to Woodville, inclusive, and Kellyville to Luther, Okla., inclusive, as points from which cotton may be shipped for compression at Weleetka Junction, Okla., otherwise known as Weleetka. The proposed changes would restrict the movement of cotton for compression originating at Kellyville and Luther and intermediate stations to compresses at Oklahoma City or Sapulpa, Okla., and of cotton originating at Scullin and Woodville and intermediate stations to compresses at points other than Weleetka. The Fort Smith Compress Company at Weleetka and other cotton interests in Oklahoma and Arkansas protested the tariff and it was suspended until February 5, 1916, and later until August 5, 1916.

The main line of the St. Louis & San Francisco Railroad, hereinafter referred to as respondent, enters the state of Oklahoma near the northeastern corner and continues across the state in a southwesterly direction to and through Tulsa, Sapulpa, Weleetka, Holdenville, and Ada, Okla., to Red River, Tex., where it connects with the St. Louis, San Francisco & Texas Railway. Scullin and Woodville are on respondent's line south of Ada. A branch line, hereinafter referred to as the Waynoka division, extends from Tulsa in a northwesterly direction to Waynoka, Okla. Another branch extends from Sapulpa in a southwesterly direction to and through Oklahoma City, 104 miles from Sapulpa. Kellyville and Luther are on this branch line between Sapulpa and Oklahoma City. Weleetka is 57 miles south of

Sapulpa; Holdenville, 82 miles; Ada, 110 miles. Compresses are located at each of these points.

Cotton is grown extensively throughout the territory traversed by respondent's line in Oklahoma except in the extreme northern part of the state. The cotton moves principally through the Gulf ports, but since the outbreak of the present war in Europe a large part of the movement has been by all-rail routes to northern and eastern consuming and shipping points. Respondent agreed at the hearing to permit compression at Weleetka of cotton originating between Scullin and Woodville, when destined to northern and eastern points by an all-rail movement, and this arrangement is satisfactory to protestants.

Through rates are published on cotton from producing points to Gulf ports and to points of domestic consumption, which usually provide for the carrier's privilege of compression in transit. The uncompressed cotton moves to a compress at the local rate and after compression moves forward at the rate applicable on compressed cotton from the compress point to final destination, a refund subsequently being made of the difference between the aggregate of the two rates paid and the through rate from the point of origin. The result is that the cotton moves from the point of origin to final destination at a published through rate with carrier's privilege of compression in transit. The charge for compression is included in the through rate and is paid by the carrier.

It is respondent's general policy to accord each producing point the choice of two or more dependable compresses on its line, but without permitting uncompressed cotton to pass a compress in either direction. This practice is said to be followed by the other carriers in Oklahoma. Cotton thus moves to the nearest compress in either direction, but as a rule may not move for compression at the carrier's expense to a compress next beyond either of such compresses. Cotton originating at a compress point must be compressed at that point. The territorial limits of each compress are set forth in the tariffs. But sometimes it is necessary to pass a press in order to give the shipper a choice between two presses. This is illustrated in moving cotton from the Waynoka division, which must pass the Sapulpa compress to reach another compress. Under respondent's tariff, cotton from this territory may also pass the Weleetka compress and move to the Holdenville compress. Respondent explains that it opposed the construction of the latter compress because there were already more compresses in that territory than the cotton produced required or would support, and that application in this instance of its policy of refusing to permit uncompressed cotton to pass a com-

press would result in unduly restricting the territory of the Weleetka, Ada, and Holdenville compresses.

Respondent's principal justification for the enforcement of its policy is the conservation of equipment. The heaviest movement of cotton is during the months of September, October, November, and December, when other traffic moves in large volume. Uncompressed cotton is bulky, and averages about 31 bales per car, while compressed cotton averages between 50 and 60 bales per car. Compression at Weleetka of cotton from the territory between Kellyville and Luther destined to northern and eastern points by all-rail routes involves an out of line haul of 114 miles, 57 miles from Sapulpa to Weleetka, and return. It is estimated that from three days to five days are consumed in the movement of a car from that territory to Weleetka and back again for new loading, as against one day for the movement of a car to either Oklahoma City or Sapulpa. The compresses at the latter points are located on respondent's rails, while the compress at Weleetka is located on the Fort Smith & Western Railroad and involves a switching service which is performed by that carrier. When cotton originating on the Oklahoma City branch destined to Gulf ports is compressed at Weleetka it moves uncompressed through Sapulpa to Weleetka, 57 miles, and with use of two cars instead of one for that distance. Respondent explains that it is more economical to deliver cotton originating between Kellyville and Luther and destined to points in the south to its connections at Oklahoma City than to carry it through Weleetka and make delivery to connections at Red River. The compresses at Oklahoma City and Sapulpa appear to be well managed and adequate in every respect. Oklahoma City is the financial center of the state, and no complaint is made that Sapulpa is lacking in banking facilities.

Respondent also urges that no provision of the act is contravened by reason of the proposed territorial limitation placed upon the Weleetka compress and refers to our report in *Concentration of Cotton*, 26 I. C. C., 585, wherein we said, at page 594:

Free from conditions or practices which transgress or trespass upon the provisions or prohibitions of the law, respondent may employ any compress company or operator as its agent, but such arrangement must also avoid and be free from unjust discrimination and undue preference.

Merchants Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I. C. C., 98, related also to compression of cotton and allowances therefor. In that case we said, page 104:

Compression is a service which the carrier procures for its own convenience, and when that service is performed in such a manner as not to prejudice or prefer a particular shipper or community the act does not limit the freedom of

the carrier to make contracts in respect thereto. Of course, if the arrangement made in any case results in undue preference or prejudice to shippers, the Commission has jurisdiction to correct the wrongdoing.

The Fort Smith Compress Company and the Lesser-Goldman Cotton Company, which owns about 71 per cent of the stock of the compress company, are the only protestants which appeared at the hearing. The main ground of their protest is that as the storage capacity of the Weleetka compress has been increased within the last two years to approximately 100,000 square feet it would be unjust at this time to restrict the movement of cotton to Weleetka. It is stated also that cotton moving under a Weleetka bill of lading commands a higher price in the cotton markets than cotton moving under an Oklahoma City bill of lading, because a better grade of cotton is grown in the territory contiguous to Weleetka, and the purchaser assumes that he is buying principally Weleetka grown cotton. Protestants apparently assume that such misapprehensions should be fostered. They do this while admitting that the staple grown in the territory surrounding Sapulpa is equal to the Weleetka staple. Protestants also refer to respondent's departure in certain sections of the state from its policy of not permitting uncompressed cotton to pass a compress. The Weleetka compress is not in competition with those in sections of the state where that policy is followed. It has no vested right to be selected by respondent as an agency for doing the compression for which respondent pays, and is apparently not a party to the transportation, either as shipper, consignee, or otherwise.

We find that the application of the proposed tariff will not result in undue prejudice to the Weleetka compress or to the shippers whose cotton is compressed in transit under the carrier's privilege. The order of suspension will be vacated.

39 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 726.

CLASSIFICATION OF CHAIN.

Submitted January 19, 1916. Decided May 2, 1916.

Changes proposed in the western classification in the descriptions and ratings of chains, belting or sprocket, justified.

R. C. Fyfe and R. W. Fyfe for all respondents.

Edward E. Gates, Quincy A. Myers, and J. Keavy for protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This proceeding involves an item in the western classification, filed to take effect October 15, 1915, which proposes certain changes in the descriptions and ratings of sprocket chains used for power transmission when shipped in less-than-carload lots. The item was protested by the Indianapolis Chamber of Commerce and was suspended until August 12, 1916. Manufacturers of chains located at Hartford, Conn., and Worcester, Mass., also were represented at the hearing.

The present descriptions and ratings, as far as they are relevant, are as follows:

Chains:	Class L. C. L.
Automobile, bicycle or motorcycle, belting or sprocket, in barrels or boxes -----	2
* * * * *	
Chains, not otherwise indexed by name:	
Belting or sprocket:	
* * * * *	
Steel:	
* * * * *	
In barrels or boxes, or on reels -----	4

The pertinent provisions of the suspended descriptions and ratings read:

Chains:	Class L. C. L.
* * * * *	
Belting or sprocket:	
* * * * *	
Steel:	
Machine finished, in barrels or boxes, see note -----	2
NOTE.—Rating applies on machine finished block, gear or roller chains such as are used for power transmission on automobiles, bicycles or machinery.	
Other than machine finished:	
* * * * *	
In barrels, boxes or on reels -----	4

The proposed changes would result in a rating higher than the present rating on certain shipments. The present tariff provisions apply the second-class rating to automobile, bicycle, and motorcycle sprocket chains, but permit chains of the same type and structure to move at fourth-class rates when for use with other machinery. The proposed descriptions draw the dividing line between different grades of chains and divide steel belting or sprocket chains into machine-finished and other than machine-finished chains, regardless of the uses to which they may be put. These descriptions were recommended by the Committee on Uniform Classification, and have been proposed not only in the item here under consideration but by similar items in official and southern classifications.

Respondents urge that the new descriptions would not change or increase the rating applicable to most machine-finished steel sprocket chains; that these chains were originally made for use upon bicycles, automobiles, and motorcycles, and were generally known as bicycle chains; and that, regardless of the names under which the chains have been shipped, respondents have always charged the second-class rate upon chains of the bicycle chain type when they detected them. But at least one of the protestants has shipped certain chains, usually known as bicycle chains, which were rated second class and charged for on that basis when consigned to firms dealing in bicycles and like articles, and fourth class when consigned to firms dealing in general machinery.

Protestants agree with respondents that the present descriptions of chains should be modified in order to avoid rating chains according to the uses to which they may be put. They do not contest the descriptions proposed, but contend that machine-finished steel belting or sprocket chains should be rated third class in the western classification. A third-class rating would involve a reduction of one class in the long established rating on bicycle chains and chains of that type and an increase of one class, it is said, on similar chains used on other machinery.

Belting or sprocket chains made of steel or malleable iron have long been used in the transmission of power. Machine-finished steel belting or sprocket chains are comparatively new and apparently replace the commoner types wherever accuracy or finish, standardization, and reliability in use are required. The machine-finished steel sprocket chain appears to have been developed to supply the demands of the bicycle trade, and its use has been extended not only to automobiles, motorcycles, tractors, and the like, but to machinery in general. The competition between the machine-finished chains and those not so finished is therefore a competition from the higher and more desirable article and depends principally upon the initial cost. For high-grade machines requiring chains to transmit power

at great speed or under severe stress the machine-finished chain is usually demanded. Even for rough work, such as the transmission of power in connection with mining machinery and concrete mixers, machine-finished chains frequently are preferred to ordinary sprocket chains, even though they may cost more, on account of their reliability and strength.

All of the protests were made by manufacturers of only one type of chain covered by the item suspended. This type of chain varies in value from 18 cents per pound to 52 cents and over. The average value of certain shipments during a limited period was about 25 cents per pound; the average weight per package, 280 pounds; the average cubical contents per package, 1.39 cubic feet; the average weight per cubic foot, 201.7 pounds.

The western classification rates belting, cotton, leather, or rubber, first class; automobile tire chains, in barrels or boxes, second class; hardware, not otherwise indexed by name, in barrels, boxes, bundles, or crates, second class; various kinds of specified machinery and machines usually requiring machine-finished steel sprocket chains, and machinery and machines not otherwise indexed by name, generally first class when set up, second class when knocked down; all less than carloads. In *Western Classification Case*, 25 I. C. C., 442, we held that automobile or bicycle chains should not be rated higher than second class. The chains now under consideration are of the type ordinarily known as bicycle or automobile chains, and no good reason has been shown why the ratings applicable should be reduced.

We find that respondents have justified the changes in the descriptions and ratings of the machine-finished steel belting or sprocket chains under suspension, and an order vacating the suspension will be entered.

39 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 738.
LUMBER FROM EASTON, WASH.

Submitted March 11, 1916. Decided May 8, 1916.

Proposed increased rates for the transportation of lumber in carloads from Baker, Bristol, Cle Elum, Easton, Lavender, Nelson's, Talmage, Teanaway, and Whittier, Wash., to points in North and South Dakota, Nebraska, Kansas, Colorado, Idaho, Louisiana, Missouri, Montana, New Mexico, Oklahoma, Oregon, Texas, Utah, and Wyoming found to have been justified.

S. J. Henry for respondents.

No appearance for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

This proceeding involves tariff schedules contained in supplement No. 8 to R. H. Countiss's tariff I. C. C. No. 1003, filed to take effect November 11, 1915, whereby respondents proposed increases ranging from 1 cent per 100 pounds to 4 cents in the carload rates on lumber from Baker, Bristol, Cle Elum, Easton, Lavender, Nelson's, Talmage, Teanaway, and Whittier, Wash., situate east of the summit of the Cascades and within the lumber rate territory known as the east slope group near the western boundary of that group, to points in North Dakota, South Dakota, Nebraska, Kansas, Colorado, Idaho, Louisiana, Missouri, Montana, New Mexico, Oklahoma, Oregon, Texas, Utah, and Wyoming. Upon protest filed by Miller Brothers Post & Lumber Company of Seattle, Wash., the schedules were suspended until March 10, 1916, and later until September 10, 1916. All rates herein are stated in cents per 100 pounds.

There was no appearance for protestant at the hearing. The Northern Pacific Railway and the Chicago, Milwaukee & St. Paul Railway originate the traffic in controversy. The representative of the Northern Pacific, which road assumed the burden of proof, stated that the proposed increases were intended to prevent the defeat of the through rates to the destination involved from points in its coast group through points in the so-called east slope group. Shipments of lumber from Weston, Wash., to Fleming, Colo., for example, can now move to Easton at a rate of 4 cents per 100 pounds, and thence to destination at a rate of 38 cents, while the joint rate from Weston to Fleming is 43 cents. Whether or not similar departures from the provisions of the fourth section are involved in the rates as to all

of the points of origin in controversy, it is clear that such departures exist in connection with the rates from some of the points. But these departures are protected by Fourth Section Application No. 351, filed by R. H. Countiss, agent, which was not set for hearing herewith. It is stated that there has been no movement of lumber from the points from which increases are proposed to the destination territory involved since June, 1914.

We have consistently enforced the principle that the lawfully published interstate rates must be applied by carriers and paid by shippers on all through interstate traffic, and that it is unlawful for shippers to bill shipments to an intermediate point and to rebill beyond merely to take advantage of an aggregate of intermediate rates lower than the through rate. *Kanotex Refining Co. v. A., T. & S. F. Ry. Co.*, 34 I. C. C., 271. We accordingly find that any undercharges that may be outstanding on the basis of the present through rates involved should be collected.

The rates proposed would rectify the fourth section departures described, and would preserve the integrity of the group rates from the groups or blankets and on the bases fixed by us in *Potlatch Lumber Co. v. N. P. Ry. Co.*, 14 I. C. C., 41, and associated cases, known as the *Pacific Coast Lumber Cases*.

We find that respondents have justified the proposed increases, and the order of suspension will be vacated.

29 I. C. C.



INVESTIGATION AND SUSPENSION DOCKET No. 756.
COAL TO GLENCOE, MO.

Submitted February 10, 1916. Decided May 2, 1916.

Proposed increased rates on bituminous coal in carloads from mines on the St. Louis, Iron Mountain & Southern Railway in Illinois to stations on the Missouri Pacific Railway in Missouri found justified, and order of suspension vacated.

R. W. Carter for Glencoe Lime & Cement Company.

C. E. Warner for Missouri Pacific Railway Company and its receiver.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules filed to take effect December 15, 1915, respondents Missouri Pacific Railway and St. Louis, Iron Mountain & Southern Railway, hereinafter termed the Iron Mountain, proposed to increase the joint rates applicable on bituminous coal in carloads from mines on the Iron Mountain in the so-called outer group in southern Illinois to Glencoe, Mo., 27 miles west of St. Louis, and to 14 other stations intermediate to Glencoe from St. Louis on the Missouri Pacific. The present rates range from 87 cents to \$1 per ton; the rates proposed, from 90 cents to \$1.20. Upon protest filed by the Glencoe Lime & Cement Company the schedules were suspended until April 13, 1916, and later until October 13, 1916.

The protest of the Glencoe Lime & Cement Company was the only one received, and is confined to the rate proposed to Glencoe, where this protestant operates a lime kiln. The present rate to Glencoe is \$1; the rate proposed, \$1.20.

Coal mines in Illinois east of St. Louis are divided for rates on westbound traffic into two groups known as the inner group and the outer group. The location and boundaries of the two groups are given in detail in *The Illinois Coal Cases*, 32 I. C. C., 659. The usual method of making rates from these groups to points in Missouri is now and long has been to add the rates applicable beyond East St. Louis to a proportional rate of 25 cents from the inner group to East St. Louis and a proportional rate of 40 cents from the outer group. The rates beyond East St. Louis are composed of a charge of 20 cents per ton for transportation across the Mississippi River

and the local rates from St. Louis to destinations. The relationship between the two groups represented by the proportional rates named has been maintained for a number of years, although apparently with occasional exceptions, as hereinafter explained. The 15-cent differential between rates from the inner group to St. Louis and East St. Louis and the rate from the outer group, together with the 20-cent differential between rates from both groups to St. Louis and to East St. Louis, respectively, were approved in *The Illinois Coal Cases, supra*. On March 30, 1909, the Missouri Pacific published a joint rate of 90 cents per ton from the outer group to Glencoe, which was equivalent to the 40-cent proportional to East St. Louis plus 50 cents beyond, composed of the 20-cent charge for transportation across the river and a proportional rate of 30 cents beyond. On January 8, 1910, the rate from St. Louis to Glencoe was increased from 30 cents to 60 cents, which amount, added to the river charge of 20 cents, made a total of 80 cents from East St. Louis. But the through rate was not changed and remained in effect until September 30, 1915, when it was increased to \$1 following the *Western Rate Advance Case*, 35 I. C. C., 497, 603-611. The rate from the inner group to Glencoe is \$1.05 per ton, composed of the 25-cent proportional to East St. Louis and a charge of 80 cents beyond. Operators in the inner group have applied to the Missouri Pacific for rates to the points here involved on the usual basis of 15 cents under the rates applicable from the outer group, and the rates under suspension represent an attempt to comply with this request without reducing the rates applicable from the inner group.

The usual 15-cent differential basis for constructing rates to points in Missouri is consistently employed by the Missouri Pacific to all stations on its line between St. Louis and Kansas City, Mo., with the exception of Glencoe and the intermediate points involved. Rates from mines in the outer group on roads other than the Iron Mountain are on the usual basis to all points on the Missouri Pacific between St. Louis and Kansas City. The 40-cent proportional rate used to East St. Louis has been in effect from the outer group over all lines for a considerable period. The 60-cent local from St. Louis is stated by the Missouri Pacific to be the distance tariff scale rate of the old Railroad and Warehouse Commission of Missouri and to have been in effect for a number of years also. The Missouri Pacific's local rates have recently been approved by the Railroad Commission of Missouri.

Protestant's objection to the proposed rate to Glencoe is based upon the local maintenance of the 90-cent rate and comparisons of proportional rate of \$1.20 with rates from the outer group to Illinois and seven stations in Missouri.

Protestant has competitors at all of the points mentioned and relies upon these comparisons to show that the proposed rates would be both unreasonable and unjustly discriminatory. The rates cited to Illinois points are intrastate rates, and proposed increases in them are now under suspension. Glencoe is about 155 miles from the mines in the outer group, from which protestant purchases its coal. The distances from these mines to the seven Missouri points cited range from 151 miles to 248 miles; the rates cited from 90 cents per ton to \$1.25 per ton. Protestant made no attempt to show that transportation conditions to these stations and to Glencoe are substantially similar.

The Missouri Pacific does not serve any of the Missouri stations named by protestant and does not make the rates to them. Four of these stations are on the St. Louis & San Francisco Railroad, and a witness for the Missouri Pacific testified that the rates to these points are on the usual basis but are relatively lower than the proposed rates to Glencoe because of the lower rates in effect on the St. Louis & San Francisco beyond East St. Louis. The witness could not give the reasons for the maintenance of such rates. The rate to Glen Park, Mo., on the St. Louis, Iron Mountain & Southern, was formerly 95 cents for a distance of 152 miles, but was reduced to 80.5 cents on May 1, 1916. The line on which Glen Park is located runs south from St. Louis, almost at right angles to the line of the Missouri Pacific, and only a one-line haul is involved. The Missouri Pacific contends that, under the circumstances, the rates cited by protestant are not proper measures of the rates under suspension.

We find that respondents have shown that the proposed increased rates are just and reasonable, and we are not convinced that the establishment of these rates would result in unjust discrimination against the protestant. Our order of suspension will therefore be vacated.

No. 3589.

H. S. GILE & COMPANY ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted January 18, 1916. Decided May 2, 1916.

Upon rehearing, rates from eastern defined territories to points in the Willamette Valley of Oregon found justified.

Edward M. Cousin for complainants.

H. A. Scandrett, F. H. Wood, Ben C. Dey, and C. W. Durbrow for defendants.

A. W. Hawkins for Union Pacific system.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants' original petition, filed October 14, 1910, alleged: (1) That increased rates effective March 22, 1910, on less-than-carload shipments from eastern defined territories to points in Oregon in the Willamette Valley were unjust, unreasonable, and unduly prejudicial; (2) that the rates from eastern defined territories to Portland, Oreg., through Ogden, Utah, and the Roseville, Cal., gateway were unjust and unreasonable to the extent that they exceeded the rates applicable by way of the northern routes and through El Paso, Tex.; (3) that the transcontinental class rates in effect to points on the Southern Pacific lines in Oregon were unjust and unreasonable to the extent that they exceeded the class rates to Portland; and (4) that the transcontinental commodity rates to points on the Southern Pacific lines in Oregon should not exceed the rates contemporaneously in effect on similar traffic to points between Portland and Tacoma, Wash., viz, 10 cents per 100 pounds higher than the commodity rates applicable to north Pacific coast terminals for less than carloads; 5 cents per 100 pounds higher for carloads. Reparation was asked.

Prior to March 22, 1910, most of the transcontinental rates to points in the Willamette Valley in Oregon were constructed by adding an arbitrary of 10 cents per 100 pounds on both carload and less-than-carload shipments to the class or commodity rates in effect to Portland. Prior to 1902 the same rates which applied over the northern routes to Portland and through Portland to Willamette points also applied over the Southern Pacific through El Paso, Tex.,

and southern California points, and over the Southern Pacific from Ogden through Roseville and Sacramento, Cal., hereinafter referred to as the Roseville gateway. In September, 1902, subsequently to the merger of the Union Pacific and the Southern Pacific, the joint rates through the Roseville gateway were canceled. Effective March 22, 1910, a new basis of rates to Willamette Valley points was adopted. The 10-cent arbitrary over Portland was replaced by the full class locals from Portland to destinations on the first four classes and on all articles in the first four classes taking commodity rates to Portland, carload or less than carload, with the possible exception of a few commodities on which joint rates were made specifically instead of arbitrarily over Portland.

The original hearing was confined to a consideration of the alleged closing of the Roseville gateway. We denied complainants' application that the Roseville gateway be reopened on transcontinental traffic and dismissed the complaint, 22 I. C. C., 298, reserving the question of reparation upon transcontinental shipments to Willamette Valley points for consideration in *Railroad Commission of Oregon v. S. P. Co.*, 24 I. C. C., 273, which was then pending. On complainants' application the case was reheard except that portion of it which related to the establishment of a route to the Willamette Valley through the Roseville gateway, 34 I. C. C., 319. Prior to the rehearing the carriers voluntarily established transcontinental class rates to Willamette Valley points the same as the rates to Portland. The testimony given at the rehearing was confined to the increased commodity rates to Willamette Valley points through Portland. We found that defendants had refuted complainants' charge of undue preference to points between Portland and Tacoma, but had failed to show that the increased rates to Willamette Valley points were just and reasonable. We prescribed certain rates from Portland to destinations on the Southern Pacific lines in Oregon, known as East Side, West Side, and Yamhill divisions, for application as components of through rates on shipments of carload and less-than-carload quantities of freight included in the first four classes and moving under commodity rates from Missouri River and the territory east thereof. We further found that there was no evidence of record upon which to base a finding with respect to the rates on commodities rated lower than fourth class. Reparation was denied. Throughout the proceedings in this case neither complainants nor defendants offered any evidence with respect to rates other than to Willamette Valley points, nor with respect to the carload commodity rates to Willamette Valley points, although it was stated that the latter rates had not been increased previously since 1890.

Our supplemental order was withdrawn and the case again further heard upon an application by the Southern Pacific.

Since the case was originally submitted the merger of the Union Pacific and the Southern Pacific has been dissolved. On June 15, 1914, joint rates were reestablished on transcontinental traffic to Portland and Willamette Valley points over the Southern Pacific lines through the Roseville gateway. The short-line distance from eastern territory to Portland is over the northern lines, and to Willamette Valley points over the northern lines through Portland. In order to participate in the traffic to Portland and Willamette Valley points over its longer routes through the Roseville and El Paso gateways the Southern Pacific, hereinafter termed defendant, must meet the short-line rates. Since the reestablishment of the Roseville gateway 60 per cent of the less-than-carload traffic to Willamette Valley points has moved over defendant's lines through the Roseville and El Paso gateways.

Defendant urges that the adjustment prescribed by our last order would result in unreasonably low rates for the service performed and that it is inconsistent with the adjustment required under our fourth section orders in *Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329, and *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611, and 34 I. C. C., 13.

In *Railroad Commission of Nevada v. S. P. Co.*, *supra*, we denied authority to the carriers to maintain lower commodity rates from Missouri River points to the Pacific coast terminals than to intermediate points, but authorized the maintenance of higher rates to the intermediate points than to the terminals: 7 per cent higher on traffic originating in Chicago territory; 15 per cent higher on traffic originating in Buffalo-Pittsburgh territory; 25 per cent higher on traffic originating in New York territory. Upon application of the carriers we extended the effective date of this order to October 1, 1914, except as to the rates on commodities shown in a list attached to the application and designated schedule C. The effective date of the order relative to the excepted rates was extended until January 1, 1915. A hearing was had subsequently with respect to the commodities listed in schedule C, which commodities originate in large volume on the Atlantic seaboard, are adapted to water transportation, and move by water from the Atlantic seaboard to the Pacific coast in considerable quantities. Under our final order in these cases the carriers were granted a greater measure of relief on schedule C commodities than on other commodities. We held, however, that the rates to the intermediate territory should be fairly graded from the terminals to the interior and authorized rates to the intermediate points that should be constructed by adding to the full terminal rates arbitraries varying with the distance from the nearest port not to exceed 75 per cent of the local rate from the port, pro-

vided that the rates so constructed should not in any case exceed the maximum rates prescribed to intermediate points. On a list of commodities known as schedule B commodities the carriers are permitted to add the full locals back from the terminal, provided the through rates so made do not exceed the rates to the terminals by more than the percentages above stated to intermediate points.

Defendant shows that the arbitraries prescribed in the instant case for addition to the rates to Portland and for application on both schedule B and schedule C commodities are less than 75 per cent of the local rates from Portland and in many instances are less than 70 per cent. Defendant maintains that although Willamette Valley points are intermediate to Portland through the Roseville and El Paso gateways, they are not within the back-haul territory contemplated in the above-cited decisions. In Fourth Section Order No. 4211 we granted the application of defendant to charge higher rates through the Roseville and El Paso gateways to points intermediate to Portland, provided the rates to the intermediate points should not exceed the lowest combination made on California terminals or north Pacific coast terminals.

In fixing rates on schedule C commodities to intermediate points in the intermountain territory on the basis of 75 per cent of the local rates from the terminal, we said in *Commodity Rates to Pacific Coast Terminals*, *supra*, at page 632, that—

The back-haul charge may be looked upon in some respects as similar to a proportional rate applicable to the movement of traffic between two points when coming from or destined to a more distant point. A proportional rate is ordinarily less than the local rate in recognition of the fact that the traffic has already paid or will subsequently pay a further transportation charge. Should any of these through rates to back-haul territory be arrived at by adding to the terminal rate something less than the local rate from the terminal, it would be in recognition of the fact that the traffic does not, in fact, move to the terminal and thence back to the interior point, but is stopped off at the interior point, and the carrier is thus saved the expense of hauling to the terminal and back to the intermediate point.

Defendant urges that in the case of shipments destined to Willamette Valley points through Portland the services are performed directly to the terminal and from the terminal to the point beyond the terminal, and contends that a just and reasonable rate for such shipments is the terminal rate plus the full local rate to points beyond.

The record shows that the terminal services performed at Portland on less-than-carload transcontinental shipments to Willamette Valley points through Portland are greater than in connection with a local shipment from Portland. A shipment destined to a Willamette Valley point is unloaded upon arrival at Portland at the freight house of the Oregon-Washington Railroad & Navigation

Company or the Northern Pacific Railway Company, is reloaded into a house car, and transferred through the terminal yard by special service to the freight house of defendant, and is there unloaded by defendant and reloaded into cars to be transported to destination. Each line is required to perform an extra handling in addition to the terminal service. On a local shipment originating at Portland there is only one handling. Although the shipments by way of Roseville are not subject to this extra terminal expense, the rates to the destinations involved are based on the short-line route through Portland.

Defendant's witnesses testified that the local rates from Portland to Willamette Valley points were made in competition with boat lines on the Willamette River and are low. The Oregon Railroad Commission is said to have considered these local rates in 1910 and 1912 and to have approved them with minor modifications.

Competition in the Willamette Valley is keen. The Oregon Electric Railway extends south from Portland to Eugene and to Forest Grove, and the Willamette Valley Southern Railway in connection with the Portland Railway, Light & Power Company from Portland to Mount Angel. These electric lines closely parallel defendant's lines, but despite the severe competition for traffic their rates are with few exceptions no lower than the scale charged on the line of the Southern Pacific Company.

Defendant filed a statement comparing the less-than-carload rates on 25 commodities from eastern points to Portland, Spokane, Reno, Nev., and Salt Lake City, Utah, with the rates to Woodburn, Salem, and Albany, Oreg., representative points in the Willamette Valley, based on the present local rates from Portland and on the arbitraries fixed by the Commission in its report and order of June 2, 1915, subsequently withdrawn. This statement shows that on some commodities the present rates from Chicago, Ill., to Woodburn, for example, are lower than to Spokane, Reno, and Salt Lake City, which are from 295 miles to 798 miles nearer Chicago. In a majority of instances, however, the rates to Woodburn range from 7 cents to 10 cents higher than the rates to Spokane or Reno. If the arbitraries prescribed by us in this case should become effective, the rates to Woodburn on many of the commodities shown which are now higher than to Spokane and Reno would be reduced to the level of the rates to Spokane and Reno, or a lower level, and in some instances would be as low as or lower than the rates to Salt Lake City.

Upon a careful review of the entire record and taking into consideration the fact that the rates both to and from Portland have been established under the influence of water competition, we find that defendant has justified the present rates to Willamette Valley points. An order will be entered dismissing the complaint.

HALL, *Commissioner*, dissents.

20 I. C. C.

No. 5061.

DAVIS MILLING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted February 17, 1916. Decided May 2, 1916.

Present adjustment of rates on pancake flour and buckwheat flour from St. Joseph, Mo., to San Francisco and Los Angeles, Cal., shown upon rehearing to be satisfactory to all parties in interest.

H. G. Krake and R. R. Clark for complainant.

W. D. Kerr for Blodgett Milling Company, intervener.

D. L. Myers for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION :

We found in our original report herein that the maintenance of a rate of 90 cents per 100 pounds on pancake flour in carloads from St. Joseph, Mo., to San Francisco and Los Angeles, Cal., while a rate of only 65 cents was maintained on buckwheat flour and corn flour, was unreasonable and unduly prejudicial to complainant. The maintenance of equal rates on pancake flour, buckwheat flour, and corn flour was required for the future.

The rates on wheat flour, buckwheat flour, and corn flour were the same, and following our order defendant attempted to increase the rate on buckwheat flour and corn flour to the pancake flour basis. The proposed increase was suspended in *Westbound Trans-Continental Rates on Buckwheat and Corn Flour*, Investigation and Suspension Docket No. 402, unreported, where we held that the rates on buckwheat flour and corn flour might properly be a differential of 10 cents per 100 pounds higher than the rates contemporaneously in effect on wheat flour. This last case was reopened at the request of certain buckwheat flour interests, whereupon we held that rates on buckwheat flour and on corn flour should not exceed those contemporaneously maintained on wheat flour. *Rates on Buckwheat and Corn Flour*, 37 I. C. C., 364. Apprehending that a maladjustment might result, we thereupon vacated that portion of our order in the instant case which required the maintenance of rates on pancake flour not higher than the rates on buckwheat flour and corn flour and reopened the case for further hearing on the relationship

of the rate on pancake flour to the rates on buckwheat flour and corn flour.

Complainant's representative at the last hearing expressed satisfaction with the present adjustment, under which wheat flour, buckwheat flour, corn flour, and pancake flour take equal rates, and moved that the proceeding be discontinued. The intervening buckwheat flour interests and the defendant concurred. No order is necessary.

No. 5151.¹

AETNA POWDER COMPANY

v.

WABASH RAILROAD COMPANY ET AL.

Submitted March 10, 1915. Decided May 2, 1916.

Following *Rates on High Explosives to G. T. Ry. System Stations*, 33 I. C. C., 587, no conclusion expressed on the question whether the Commission has jurisdiction to require the establishment of joint rates from Aetna, Ind., through the Dominion of Canada to Concord Junction, Mass. Orders previously entered rescinded in part because of the establishment of through routes and joint rates entirely within the United States.

W. H. Biggar and George F. Brownell for Grand Trunk Railway Company of Canada.

E. W. Beatty and George F. Brownell for Canadian Pacific Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

We found in our original report herein of June 29, 1914, unreported, that the charges exacted by defendants for the transportation of certain carload shipments of high explosives, dynamite, from Aetna, Ind., through the Dominion of Canada, to Concord Junction, Mass., in 1910 and 1911, were unreasonable, and prescribed joint through rates for the future on a first-class basis, to apply in connection with the Canadian Pacific Railway and the Grand Trunk Railway Company of Canada. Reparation was awarded. On October 9, 1914, the Canadian defendants asked to have the orders entered rescinded, alleging that we were without jurisdiction to require dangerous commodities to be carried over their lines in Canada as parts of

¹ The proceeding also embraces complaint in No. 5946, *Same v. Wabash Railroad Company et al.*

through routes to and from the United States under any conditions other than those duly approved by the Board of Railway Commissioners for Canada under the railway act of Canada, which provides in section 286 thereof that carriers are not required to transport "goods which are of a dangerous or explosive nature," and that therefore they could not legally be compelled to establish joint rates for the carriage of such commodities from any point in the United States, through the Dominion of Canada, to another point in the United States. We reopened the case for reargument upon the question of jurisdiction, but without rescinding our former orders.

Contemporaneously with our original decision herein, and on its authority, we decided in Investigation and Suspension Docket No. 305, *Rates on High Explosives*, unreported, that an item in a tariff of the Grand Trunk Railway which proposed to cancel joint through rates in connection with the Central Vermont and Boston & Maine railroads on high explosives from Chicago, Ill., to New England points should be withdrawn and the joint rates maintained. In *Rates on High Explosives to G. T. Ry. System Stations*, 33 I. C. C., 567, we dealt with a proposal by the respondents therein to cancel at the request of the Grand Trunk system the joint through rates on high explosives from Baltimore, Md., Wilmington, Del., and Philadelphia, Pa., through Canada to Grand Trunk Railway points in Michigan, observing that the points involved in Michigan on the rails of the Grand Trunk Western Railway could be reached over reasonably convenient routes lying wholly within the United States. The statutory period of suspension in that case expired February 28, 1915, but counsel for the Canadian carriers herein agreed at the argument to a further suspension of the suspended tariffs therein beyond the statutory period in order that certain arguments which counsel proposed to submit in a brief might be considered in both proceedings. The question of our jurisdiction over a Canadian carrier participating in joint rates for movements from points in the United States through Canada to other points in the United States was considered in *Rates on High Explosives to G. T. Ry. System Stations*, *supra*, but we found on page 570 that—

Obviously no definite ruling upon questions involving a possible conflict of authority as between the rate-regulating bodies of this country and of Canada should be announced in such a case as this and upon such a record and without the most ample consideration of the matter in all its phases.

An order was entered requiring the respondents to cancel the tariffs under suspension until through routes and joint rates had been established over the rails of carriers wholly within the United States.

Exactly the same record is before us here and the same arguments are made by the Canadian defendants, so that our findings in that case are controlling here.

The orders in the instant cases to the extent that they required certain rates to be maintained for the future expire September 3, 1916. They were complied with in that respect. We are not informed whether the reparation ordered has been paid.

A joint first-class rate has applied on high explosives, including dynamite, carloads, minimum 20,000 pounds, since October 19, 1915, from Aetna to Concord Junction by a route maintained by the Wabash, the Pennsylvania, the New York, New Haven & Hartford, and the Boston & Maine railroads, which route is entirely within the United States.

We find, following *Rates on High Explosives to G. T. Ry. System Stations, supra*, which required the maintenance of joint rates on high explosives through Canada only until joint rates had been established by routes wholly within the United States, that our orders in the instant cases should be rescinded to the extent that they require the future maintenance of joint rates.

An appropriate order will be entered.

DANIELS, *Commissioner*, dissents.

39 I. C. C.

No. 5931.
WELLINGTON MINES COMPANY
v.
COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

Submitted January 10, 1914. Decided May 2, 1916.

1. Increased through rates on zinc concentrates from Breckenridge, Colo., to Bartlesville and Collinsville, Okla., found not to have been justified in respect of the component applicable from Breckenridge to Denver, Colo. Reasonable proportional rate prescribed for the future.
2. The shipments on which reparation is asked exceeded in value per ton the value of the ore on which the rate here prescribed is predicated, and therefore complainant is not entitled to reparation.

H. L. Ritter and B. L. Whatley for complainant.

E. E. Whitted and T. B. Woodrow for Colorado & Southern Railway Company.

C. H. Morehouse for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in extracting ores, particularly ores containing zinc, near Breckenridge, Summit county, Colo. By complaint, filed July 10, 1913, it alleges that through rates of \$5.25 and \$5.50 per ton of 2,000 pounds charged by defendants for the transportation of zinc concentrates, in carloads, from Breckenridge through Denver, Colo., to Collinsville and Bartlesville, Okla., are unjust, unreasonable, and unjustly discriminatory to the extent that they exceed the rates in effect prior to February 27, 1913, when the component applicable from Breckenridge to Denver was increased from \$1.50 to \$3 per ton. The restoration of the through rates based on the \$1.50 component to Denver is asked and reparation. The allegation of unjust discrimination was abandoned at the hearing.

There are smelters for the reduction of zinc ores at Collinsville and Bartlesville. Both points are reached from Denver by the Atchison, Topeka & Santa Fe Railway, hereinafter termed the Santa Fe. The rates per ton maintained by this road on zinc concentrates to both points from Denver are \$2.25 on shipments not exceeding \$20 per ton in value and \$2.50 on shipments worth more than \$20, but not more than \$100 per ton. Neither of these rates is attacked and we

observe that the distance from Denver to Bartlesville by way of the Santa Fe is 725 miles and that the \$2.25 rate to Bartlesville earns only 3.1 mills per ton-mile.

The Colorado & Southern Railway is the principal party defendant and will be hereinafter called defendant. All rates are stated in dollars and cents per ton of 2,000 pounds. Unless otherwise stated places named herein are located in Colorado.

Defendant owns a main line of railroad extending southward from Orin Junction, Wyo., 151 miles north of Cheyenne, Wyo., through Wyoming, Colorado, and New Mexico, to a point near the New Mexico-Texas state line. It has also a narrow-gauge branch line extending from Denver southwesterly through Platte Canon to Como, known as the Platte Canon district, thence to Breckenridge, 21.7 miles, and to Leadville, 41 miles, where connection is made with the Denver & Rio Grande Railroad. The line from Como through Breckenridge to Leadville is known as the Leadville district. The distance from Breckenridge to Denver by way of Como is 110 miles; by way of Leadville and the Denver & Rio Grande through Pueblo, 317 miles. The narrow-gauge branches described, in connection with another narrow-gauge line from Como to Gunnison and Baldwin, constitute what is known as the South Park division of defendant.

Complainant built its concentrating mill at Breckenridge in 1908. In February, 1907, defendant had established a rate of \$1.50 from Breckenridge to Denver, applicable on ore of a gross value not exceeding \$8 per ton, with higher rates on ore of higher values. The maximum rate was \$3 on ore of a gross value over \$18 but not exceeding \$100 per ton, or exceeding \$100 but released to \$100 per ton. Effective November 1, 1910, for reasons hereinafter stated, all rates from Breckenridge to Denver by way of defendant's direct line were canceled, but were immediately established as joint rates by way of Leadville and the Denver & Rio Grande. These joint rates were canceled February 27, 1913, but defendant established by way of its line direct from Breckenridge to Denver a rate of \$3 on ore and concentrates, released to a valuation not exceeding \$100 per ton. Defendant's rate from Breckenridge to Leadville was simultaneously increased from \$1.50 to \$1.75, which rate, together with the rate of \$1.50 from Leadville to Denver by way of the Denver & Rio Grande, constitutes the present combination rate of \$3.25 to Denver over that route.

The operation of the narrow-gauge line between Breckenridge and Como was discontinued November 1, 1910. But the Chamber of Commerce of Breckenridge complained to the state railroad commission of Colorado against the closing of the route and it was ordered reopened. Defendant did not comply with that order, and

suit was brought in the courts of Colorado to compel compliance. Both the trial court and the supreme court sustained the railroad commission, and a writ of error from the Supreme Court of the United States to the supreme court of Colorado was dismissed on motion of the defendant herein, 234 U. S., 767. Operations over the route from Breckenridge to Como accordingly were resumed January 1, 1913, and the rates of February 27, 1913, were established.

Besides increasing its rates on ore defendant has, since resuming operations over this route, increased its former rates on forest products and live stock from Breckenridge to Denver and its rates on hay from certain South Park points to Breckenridge. On all other commodities the former rates have been established.

Defendant's principal justification of the increased rate in issue is that its South Park or narrow-gauge division had been operated at a loss during the 10 years previous to the hearing in 1913. The operation of the line from Denver to Leadville, including the payment of taxes, resulted in a deficit of \$50,053.46 for the calendar year 1910. This accounting deficit is reached by offsetting an operating income of \$29,003.33 on the Platte Canon district against an operating deficit of \$79,056.79 on the Leadville district. The operating deficit on the Denver-Leadville line for the year 1911 was \$70,231.15. The revenue to defendant's other lines from the traffic furnished by this line during the first eight months of 1913 amounted to \$13,734.94, and for the same period during 1912 to \$10,704.19. The Leadville district has not earned operating expenses during any year since 1903, and during the period from 1903 to 1911 it sustained a net loss from operation of over \$580,000. In 1911, when the line between Como and Breckenridge was abandoned, the deficit from operation for the year 1910 was reduced by nearly \$25,000.

The line from Platte Canon to Webster, a point near Como, runs through a narrow and precipitous mountain canon. Between Como and Breckenridge it crosses Boreas Pass at an altitude of 11,400 feet. The grades on this line reach 4 per cent and the curves are sharp. The pass is subject to heavy snowstorms, and at times in winter it is impossible to haul trains over it. Como, with a population of 400, and Breckenridge, with 834 inhabitants, are the largest towns between Denver and Leadville, and there are only two other towns that have a population in excess of 100. The country is sparsely settled, and from 1900 to 1910 the population of Summit county decreased from 2,744 to 2,003. The testimony also shows that the heaviest narrow-gauge locomotive can haul only 120 gross tons on the line from Denver to Leadville. Defendant's witness testified that the rate on ore, which on this line exceeds in tonnage all other commodities, was increased in order to minimize the operating loss.

Complainant urges that defendant's line from Denver to Leadville should be considered in connection with defendant's road as a whole, even though this branch may be operated at a loss, which complainant does not admit. During the years from 1906 to 1911 the net earnings of the road as a system ranged from \$1,897,000 to \$2,876,000, and during the years 1909 to 1912, both inclusive, annual dividends of 2 per cent on common stock and 4 per cent on preferred stock were paid. In 1914 the dividends were passed on common stock, and 2 per cent was paid on preferred. No dividends were paid in 1915. We said in *Louisville & Nashville R. R. Coal and Coke Rates*, 26 I. C. C., 20, 30, that—

If, in making rates, a through route is to be divided into divisions, and these divisions subdivided into sections, why should not the separation continue until the road is dissected into as many parts as there are stations, or miles, or even feet of track? Such a method was condemned by the Supreme Court in *S. L. & S. F. Ry. v. Gill*, 156 U. S., 649, 665-666.

There is no showing that a reduction in the rate of \$3 on low-grade ore and concentrates will result in loss to defendant, considering its system as a whole.

In the eight months' period from January to August, 1913, moreover, during the greater portion of which time the increased rate was in effect, the aggregate net operating deficit of the Leadville and Platte Canon districts was \$84,224.55. In 1910 the net deficit from the operation of these two districts was, as we have already seen, \$50,053.46. Complainant accordingly argues that the loss in operation is greater under the new rates than it was under the old rates. The reasoning is that as the low-grade traffic can not move under the increased rate, defendant does not receive any revenue on it and that there is no evidence that the loss under the old rate was any greater than under the new.

It is clearly unfair to impose the full burden of the operating losses on the ore to the benefit of practically all other commodities.

When the rate on ore from Breckenridge to Denver was increased, no changes were made in the rates applicable from Denver to Breckenridge. The increase in the rate on lumber from Breckenridge to Denver was from 12½ cents to 15 cents per 100 pounds; on cattle from 18 cents to 25 cents. The increases on hay from the South Park points to Breckenridge ranged from 2 cents per 100 pounds to 4 cents in rates ranging from 12 cents to 14 cents. In the seven months from March to September, 1913, only 317 tons of hay were shipped into Leadville district. The shipments of lumber and cattle are negligible. Complainant contends that ores should not have been singled out for an increase of 100 per cent and no increases made on any other commodities except those mentioned, as to which the in-

— 89 I. C. C.

creases are approximately 25 per cent; and also that the long maintenance of the rate of \$1.50 raises a presumption that it is reasonable and that the increase to its present level was a punitive measure by defendant against the people of Breckenridge for compelling the operation of the abandoned line.

Complainant has expended from \$225,000 to \$250,000 in the erection of ore mills and in the development of its mining properties at Breckenridge. It contends that this expenditure was made in the belief that the rate of \$1.50 would be maintained. Complainant is the largest shipper of ore over defendant's line between Leadville and Denver and in 1911 produced 67.43 per cent of the total ore shipments from Breckenridge. Since the rate was increased it has been compelled to close one of its mills, and at the time of the hearing it was engaged in the production of ore of greater value than that which it previously shipped at the old rate. Its output had decreased 50 per cent.

Defendant shows that the ore shipments from the Leadville district for the seven months from March to September, 1912, amounted to 13,283 tons, and that the tonnage during the corresponding period of 1913 increased to 14,035 tons, despite the doubled rate. Complainant states that this increase in tonnage "can well be accounted for by the fact that there is increased mining activity in this district and the grade of ore shipped has been of higher value than \$8 per ton." But in 1911 the ore shipments from Breckenridge totaled 12,894 tons, of which 8,568 tons were of a gross value of \$8 per ton or less and moved at the rate of \$1.50 per ton. Complainant's proportion of the total tonnage, 67.43 per cent, was 8,694 tons. During the period from February 28, 1913, to May 26, 1913, the shipments on which reparation is asked aggregated 2,466 tons. If shipments continued to be made at the same rate throughout the year the total shipments for the year amounted to approximately 10,000 tons.

Defendant still maintains a rate of \$1.50 per ton on ore to Denver from Como, which is at the end of the Platte Canon district, 88 miles from Denver. There is no movement of ore from Como, but this rate is maintained because a rate of \$1.50 applies from Kenosha, 12 miles east of Como, where there is a copper mine. Complainant contends that it is unreasonable to maintain a rate of \$1.50 from Como and to charge double that rate from Breckenridge, which is only 22 miles farther away.

When complainant's mill was completed in 1908 the average price of spelter was \$4.50 per 100 pounds. In March, 1913, it was \$5.92 per 100 pounds, and in August, 1913, \$5 per 100 pounds. A ton of zinc concentrates was worth \$13.50 less in October, 1913, than in October, 1912. The value of the shipments on which reparation is

asked ranged from \$13.33 to \$29.45 per ton. Complainant testified that the decline in price was one of its troubles, but added that one of its mills would not have been closed if the rate had not been increased. Defendant argues, however, that the real cause of this complaint is that the price of the product was seriously depressed in 1913.

Previously to the closing of its line between Breckenridge and Como, defendant maintained four rates on ores depending on their value. These rates have been consolidated into one rate and one valuation. But such a consolidation is lawful only where it does not result in the imposition of unreasonable and discriminatory rates. We have no standard upon which we may determine the relation of the rate to the value of the ore other than what may be inductively derived from defendant's practice.

Upon all the facts disclosed of record, we find that defendant has justified the rate of \$3 for the transportation of zinc concentrates from Breckenridge to Denver having an actual gross value exceeding \$12 per ton, but that defendant has not justified the increase in the rate on ore and concentrates of a gross value not exceeding \$12 per ton and so released and that a reasonable maximum rate on that commodity for the future from Breckenridge to Denver on through shipments destined to Bartlesville and Collinsville will be \$2.25 per ton.

As the shipments on which reparation is asked exceeded in value that which is prescribed, no reparation will be awarded.

An order in accordance with the opinion herein expressed will be entered.

so I. C. C.

No. 7905.
COFFEYVILLE VITRIFIED BRICK & TILE COMPANY
v.
MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted November 6, 1915. Decided May 2, 1916.

Claim for reparation considered to have been abandoned under the Commission's
Rules of Practice and complaint dismissed.

G. E. Mosher for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the manufacture of brick, with its principal office at Coffeyville, Kans. By complaint, filed April 10, 1915, it alleges that the charges collected by defendants for the transportation of 1 carload of paving brick from Independence, Kans., to Monticello, Ark., and 25 carloads of paving brick from Buffalo, Kans., to Marianna, Ark., in September and October, 1909, were unreasonable. Reparation is asked.

The claim was presented to us informally on December 12, 1910. After correspondence with the interested carriers it became apparent that the claim could not be adjusted informally and complainant was notified on November 1, 1913, and again on March 14, 1914, that if it desired to pursue the matter further formal complaint would be necessary. Such complaint was not filed until nearly 13 months after the second notice.

Complainant explains that the delay in filing formal complaint was due to its inability to obtain the original claim papers, which were in the possession of the Missouri Pacific Railway. But possession by complainant of the original bills of lading and paid freight bills was not a prerequisite.

Formal complaint was not filed within a reasonable time after complainant was notified that the claim could not be disposed of informally. The claim for reparation must therefore be considered to have been abandoned, and the complaint will be dismissed. *Rule III, Rules of Practice; Dillon Coal & Transfer Co. v. O. S. L. R. R. Co.*, 28 I. C. C., 91; and *Bland & Fisher Lumber Co. v. T. & N. O. R. R. Co.*, Docket No. 7011, unreported.

No. 6254 (Sub-No. 2).
ENNIS, BROWN COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted November 27, 1915. Decided May 2, 1916.

Former finding that the nonabsorption of storage charges at Stockton, Cal., on certain shipments of beans was not shown to have resulted in damage to complainants. Affirmed on rehearing.

G. J. Bradley for complainant.

G. H. Baker for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling beans, with its principal place of business at Sacramento, Cal. By complaint, filed January 29, 1914, it alleged that defendant's failure to absorb storage charges on shipments of beans at Stockton, Cal., was unjustly discriminatory. Reparation was asked in the sum of \$48.25 on three shipments which moved over defendant's line to interstate destinations after storage at Stockton. An order dismissing the complaint was entered June 2, 1915. Thereafter, on petition of complainant, the case was reopened and rehearing had upon the question whether complainant was damaged by reason of the unjust discrimination alleged and admitted by defendant so as to be entitled to reparation.

Prior to January 25, 1912, defendant's tariff provided for the absorption of charges for the storage of potatoes, onions, and beans on wharves at Stockton and Antioch, Cal., when shipments moved out of storage over defendant's line. On January 25, 1912, the absorption referred to was eliminated as to Stockton, although continued in effect as to Antioch. Effective March 20, 1912, the provision for absorption at Stockton was restored and remained in effect with certain modifications not material here until June 30, 1913, when the absorption was discontinued at both points. It has not since been reestablished.

The shipments involved moved from Stockton to interstate destinations over defendant's line during the period from January 29, 1912, to February 17, 1912, after storage at Stockton. The case was originally submitted upon a stipulation of facts in which defendant

admitted that there was no justification for the absorption of storage charges at Antioch when similar charges were not absorbed at Stockton.

It is urged that complainant competes with dealers in beans at Antioch and other places; that beans are sold at a market price; that complainant must conform to the market price to dispose of them; and that if complainant's competitors are relieved of storage charges while complainant is compelled to pay them, complainant must absorb the amount of such charges in any sales of its beans that it may make. Complainant was unable to show, however, how its prices on the shipments of beans in controversy compared with its competitors' prices at the time and no evidence was offered to show that complainant suffered damage in any specific sum.

It is also urged that the tariff effective January 25, 1912, which canceled the absorption of storage charges at Stockton, contained no symbol showing an advance nor any notation where rates thereafter would be found, as required by the rules of the Commission, and that, therefore, the provision for absorbing storage charges at Stockton was not legally canceled. The nonconformity of the tariff to our rules may have rendered the carrier publishing it liable for the penalties prescribed by the act for violations of the rules, but in the absence of proof of damage to the shipper, does not afford a basis for an award of reparation.

Upon further consideration of all the facts of record, we adhere to our previous finding that complainant has not shown that it has suffered damage, and our former findings and order therefore are affirmed.

39 I. C. C.

No. 7424.¹
ABEL & ROBERTS
v.
MISSOURI PACIFIC RAILWAY COMPANY.

Submitted August 12, 1915. Decided April 28, 1916.

Shipments of brick in carloads from Buffalo and Coffeyville, Kans., to Lincoln, Nebr., found to have been overcharged.

H. G. Denison for complainants.

Fred G. Wright for Missouri Pacific Railway Company.

Ferd Relgen for Standard Vitrified Brick Company, interveners.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the Ford Paving Company, a corporation engaged in the general contracting business, with its principal office at Cedar Rapids, Iowa; G. P. Abel and C. W. Roberts, copartners, engaged in the general contracting business, with their principal office at Lincoln, Nebr.; and the Hydraulic-Press Brick Company, a corporation engaged in the manufacture of brick, with its principal office at St. Louis, Mo. By complaints, filed October 23, 1914, they allege that the rate of 9 cents per 100 pounds charged by defendant for the transportation of certain shipments of paving brick in carloads from Buffalo and Coffeyville, Kans., to Lincoln, during the period between April 1, 1912, and November 11, 1913, was unreasonable to the extent that it exceeded 8 cents per 100 pounds. Reparation is asked. The Standard Vitrified Brick Company, of Coffeyville, by intervening petition, alleges that it is entitled to any reparation which may be awarded upon the claim filed by the Ford Paving Company. At the hearing complainants abandoned the allegation that the rate attacked was unreasonable, and limited their claims exclusively to alleged overcharges. Complainants' claims were presented to the Commission informally June 8, 1914, April 4, 1914, and April 14, 1913.

Complainants, Abel & Roberts, received 102 shipments from Buffalo between April 6, 1912, and November 11, 1913; the Ford Paving Company, 74 shipments from Coffeyville in September and October,

¹ The proceeding also embraces complaints in—No. 7424 (Sub-No. 1), Hydraulic-Press Brick Co. v. Missouri Pacific Railway Company; and No. 7424 (Sub-No. 2), Ford Paving Company v. Same.

1912; while the Hydraulic-Press Brick Company made 4 shipments from Coffeyville during April and June, 1912.

Prior to August 28, 1913, a rate of 8 cents per 100 pounds applied from and to the points involved on brick, except bath, fire, or enameled brick, including fire clay, hollow building tile, vitrified clay, conduits, partition tile, and brick blocks, in straight or mixed carloads; a rate of 9 cents per 100 pounds on vitrified brick. Effective August 28, 1913 the application of the 8-cent rate was limited to common building brick, other kinds of brick taking a 9-cent rate.

The manufacture of vitrified brick includes a burning process which gives the brick a glassy surface impervious to moisture. Vitrified brick is used principally for interior finishing, being too expensive and brittle for paving or general outside work. The brick involved were not vitrified, but were of the kind used for facing the front walls of buildings. They were burned to a certain degree of hardness, however, and were of higher grade than common building brick.

We find that the rate charged on the shipments which moved prior to August 28, 1913, was illegal to the extent that it exceeded 8 cents per 100 pounds. Defendant will be expected promptly to refund the overcharges, with interest at the rate of 6 per cent. If this is not done, the matter may be brought to our attention.

The complaints will be dismissed.

39 I. C. C.

No. 7866.
BRODERICK & BASCOM ROPE COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted September 27, 1915. Decided May 2, 1916.

Rates charged for the transportation of wire rope in less than carloads from St. Louis, Mo., to Savannah, Ga., and Belfast, Ga., found unreasonable to the extent that they exceeded the aggregates of the rates to and from Pensacola, Fla. Reparation awarded.

John Broderick for complainant.

William Burger for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of wire rope, with its principal office at St. Louis, Mo. By complaint, filed March 31, 1915, it alleges that the rates charged by defendants for the transportation of iron or steel wire rope, in less-than-carload lots, from St. Louis to Savannah and Belfast, Ga., between January, 1913, and March, 1915, inclusive, were unreasonable and in violation of the fourth section of the act in that they exceeded the aggregates of the intermediate rates to and from Pensacola, Fla. Reparation is asked and the establishment of reasonable rates for the future. Claims covering certain of the shipments were presented to the Commission informally in October, 1914.

All of the shipments but one moved: Louisville & Nashville Railroad to Montgomery, Ala.; Seaboard Air Line Railway beyond. The excepted shipment moved as routed by complainant: Louisville & Nashville to Nashville, Tenn.; Nashville, Chattanooga & St. Louis Railway to Atlanta, Ga.; Central of Georgia Railway beyond. One of the shipments moved through Montgomery but was routed through Birmingham. The others were routed over the Seaboard Air Line without specification of the junction points or were unrouted. The rates charged were the fourth-class less-than-carload rates applicable on iron or steel wire rope: 82 cents per 100 pounds to Savannah and \$1 per 100 pounds to Belfast. No commodity rates applied. The rate to Savannah was a joint rate. The rate to Belfast was a combi-

nation rate composed of the 82-cent rate to Savannah and the fourth-class rate of 18 cents beyond, although it was in effect a joint rate, as defendants' tariffs prescribed the use of these components in making the through rate. The intermediate rates contemporaneously in effect to and from Pensacola were a commodity rate of 30 cents to Pensacola, the fourth-class rate of 49 cents from Pensacola to Savannah, and the fourth-class rate of 67 cents from Pensacola to Belfast. The rates charged did not exceed the aggregates of the rates to and from Montgomery over the route of movement, but complainant contends that, in the absence of routing instructions to the contrary, defendants should have moved the shipments through Pensacola.

Savannah is 962 miles from St. Louis by way of Montgomery and the Seaboard Air Line; 1,286 miles by way of Pensacola, River Junction, and the Seaboard Air Line. Belfast is a local station on the Seaboard Air Line south of but near Savannah. The joint rates charged were applicable over the Pensacola route as well as over the route of movement, and the contention that the shipments were misrouted is not sustained.

The record discloses that in the absence of joint rates the rates to and from Pensacola would have applied over the route of movement. Montgomery, the junction point, is directly intermediate to Pensacola, the base point. Rates from Pensacola to Savannah and Belfast were not restricted as to routing, and applied by way of Montgomery as well as by way of River Junction. *Rules 4 (j) and 5 (b) of Tariff Circular 18-A*. The presumption of unreasonableness attaching to the rates charged is not rebutted by defendants' evidence, and upon all of the facts of record we find that the rates applicable on the shipments involved were and are and for the future will be unreasonable to the extent that they exceeded and exceed the aggregates of the rates contemporaneously in effect by way of Montgomery to and from Pensacola which would have applied in the absence of a joint through rate to Savannah. The Nashville, Chattanooga & St. Louis Railway and the Central of Georgia Railway Company are not parties defendant, and in the absence of necessary parties no finding can be made respecting the rate charged on the one shipment which moved over their lines. An order will be entered accordingly.

We further find that complainant made the shipments involved as described and paid and bore charges thereon at the rates herein found unreasonable; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rates herein found reasonable; and that it is entitled to reparation with interest. The exact amount of reparation due can not

be determined from the present record. Complainant accordingly should prepare a statement showing, as to each shipment on which reparation is claimed, the date of shipment, points of origin and destination, weight, route, rate applied, charges collected and date of payment, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants, we will consider further issuing an order awarding reparation.



No. 8199.

BEEKMAN SAWMILL COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted December 2, 1915. Decided May 2, 1916.

Rate charged by defendants for the transportation of a carload of second-hand sawmill machinery from Stevenson, La., to DeQueen, Ark., not shown to have been unreasonable. Complaint dismissed.

G. H. Lowry for complainant.

F. G. Wright for St. Louis, Iron Mountain & Southern Railway Company.

C. R. Hall for Kansas City Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of lumber at DeQueen, Ark. By complaint, filed July 30, 1915, it alleges that the rate charged by defendants for the transportation of a carload of secondhand sawmill machinery from Stevenson, La., to DeQueen, June 5, 1915, was excessive and unreasonable. Reparation is asked.

Complainant dismantled its sawmill at Stevenson and removed the machinery to DeQueen in order to set it up again at that point. The shipment moved: St. Louis, Iron Mountain & Southern Railway to Texarkana, Ark.-Tex.; Texarkana & Fort Smith Railway to the Texas-Arkansas state line; Kansas City Southern Railway to

destination; a total distance of 234 miles. Charges were collected on 44,900 pounds of machinery in the total sum of \$255.93, at a joint class A rate of 57 cents per 100 pounds, governed by the western classification, constructed on a differential basis of 12 cents under the class A rate in effect to St. Louis, Mo. The Texarkana & Fort Smith Railway has not been made a party defendant to the complaint.

Complainant's only evidence consists of a reference to a distance rate of 28 cents per 100 pounds for a two-line haul of 250 miles, prescribed by the Railroad Commission of Arkansas. We have held repeatedly that state rates afford standards of comparison, but that they are not controlling. Defendants show that the rate charged accords with certain interstate rates on sawmill machinery for similar distances in the same general territory.

We find that the rate assailed is not shown to have been unreasonable, and the complaint will be dismissed.

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No. 8250.

JOSEPH JOSEPH & BROTHERS COMPANY

v.

DELAWARE & HUDSON COMPANY ET AL.

Submitted December 22, 1915. Decided May 2, 1916.

Rate of \$2.10 per gross ton charged for the transportation of 15 carloads of old rails from Albany, N. Y., to Newberry, Pa., found to have been unreasonable to the extent that it exceeded \$1.90. Reparation awarded.

H. C. Barnes for complainant.

T. B. Koons, W. J. Mullin, and R. L. Russell for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in old rails and scrap iron, with its principal place of business at Cincinnati, Ohio. By complaint, filed August 16, 1915, it alleges that defendants' rate of \$2.10 per gross ton for the transportation of 15 carloads of old rails shipped in March and April, 1912, from Albany, N. Y., to Newberry, Pa., was unreasonable and unjustly discriminatory to the extent that it exceeded \$1.90 per gross ton. Reparation is asked. The claim was presented to the Commission informally February 27, 1914.

The facts were stipulated substantially as follows:

The shipments aggregated 931,240 pounds. Charges were collected in the sum of \$873.02, at the rate assailed. A rate of \$1.90 per gross ton applied by way of defendants' lines from Albany to Williamsport. Newberry is a part of Williamsport, Pa., and is known as the eleventh ward of that city. Defendants state that it was not their intention to make different rates to different parts of Williamsport and that the \$2.10 rate assailed was the result of a clerical error. They admit that the rate charged was unreasonable to the extent that it exceeded \$1.90 and express willingness to make reparation on that basis. Effective April 24, 1912, a rate of \$1.90 was established voluntarily, which was increased on February 23, 1915, to \$2 per gross ton, the present rate both to Newberry and to Williamsport.

We find that the rate charged was unreasonable at the time these shipments moved to the extent that it exceeded \$1.90 per gross ton, which we find to have been reasonable; that complainant made the

shipments as described and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$83.13, with interest from May 9, 1912. An order awarding reparation will be entered, but as the present rate has been in force for more than one year no order will be entered for the future.



No. 8217.

POCAHONTAS COKE COMPANY, INCORPORATED,
v.
NORFOLK & WESTERN RAILWAY COMPANY ET AL.

Submitted December 7, 1915. Decided May 2, 1916.

Charges based on rates to and from Greensboro, N. C., for the transportation of a carload of coke from Pocahontas, Va., to Greensboro, N. C., reconsigned thence to Greenville, S. C., not shown to have been unreasonable. Complaint dismissed.

George W. Woodruff for complainant.

R. Walton Moore for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the sale of coke, with its principal place of business at Bluefield, W. Va. By complaint, filed July 31, 1915, it alleges that the charges collected by defendants for the transportation of a carload of coke from Bluefield to Greensboro, N. C., reconsigned thence to Greenville, S. C., were unjust and unreasonable. Reparation is asked.

The facts are stipulated and are substantially as follows: On August 18, 1914, complainant delivered to the Norfolk & Western Railway at Bluefield a car of coke billed to Greensboro, N. C. The bill of lading made at Bluefield shows that the shipment originated at Pocahontas, Va. Complainant intended to consign the shipment to Greenville, S. C., but inadvertently consigned it to Greensboro, N. C. The car moved over the Norfolk & Western and the Southern

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Railway to Greensboro, where it remained until \$7 demurrage accrued. It was then reconsigned by complainant over the Southern Railway to Greenville, S. C. Charges were collected at a combination rate of \$4.45 per ton of 2,000 pounds, composed of a rate of \$2.30 to Greensboro and a rate of \$2.15 beyond. The demurrage charges which accrued at Greensboro are not in issue. A joint rate of \$2.55 per ton of 2,000 pounds applied from Pocahontas to Greenville, but this rate was not applicable by way of Greensboro, which is 39 miles out of line. The Southern Railway's reconsignment rules provided for reconsignment of coke under certain circumstances not present in this case, on the basis of the tariff rate from point of origin to reconsigned destination when no reverse or extra haul was involved and there was a lawfully established rate from point of origin to final destination over the route of movement.

Complainant alleges that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at a rate approximately 9 per cent greater than the Bluefield-Greenville rate. The distance from Bluefield to Greenville through Greensboro is approximately 9 per cent greater than by the direct route.

The service performed by defendants was consistent with complainant's instructions, and the charges collected were based on the legal tariff rates. The evidence fails to show that the charges collected were unreasonable, and the complaint will be dismissed.

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No. 8146.
PHILIP SHECTER
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted December 6, 1915. Decided May 2, 1916.

Charges collected for the transportation of two carloads of machinery, are lamps, and scrap iron, billed as junk, from Mesa, Ariz., to San Francisco, Cal., not shown to have been improperly assessed. Complaint dismissed.

M. H. Wascerwitz for complainant.

G. D. Squires for defendants.

REPORT OF THE COMMISSION.

By THE COMMISSION:

Complainant is engaged in the junk business, with his principal office at San Francisco, Cal. By complaint, filed July 6, 1915, he alleges that the rates charged by defendants for the transportation of two carloads of junk from Mesa, Ariz., to San Francisco were unreasonable. Reparation is asked.

The shipments consisted of miscellaneous pieces of scrap iron, machinery, electrical appliances, etc., billed as junk, and moved over defendants' lines May 12 and May 13, 1915. Upon arrival at destination they were inspected by an agent of the Transcontinental Freight Bureau and classified as machinery, arc lamps and globes, and scrap iron. The billing was corrected accordingly and charges were collected at the rates applicable to each class of article.

Complainant's only contention is that the shipments consisted of scrap metal and junk and were entitled to the lower rate applicable thereon. No testimony was offered tending to show that the rates charged were intrinsically unreasonable.

Defendants' tariff contained the following commodity provision:

Junk, consisting of scrap metal, as follows: Brass, copper, iron, lead, tin, and zinc, also bones, hoofs, horns (animal), old empty barrels, tierces, old rubber, old leather, old rope, old tin cans, paper scrap, rags, and broken glass, straight or mixed carloads, minimum weight 30,000 pounds.

Complainant's testimony fails to show that the contents of the cars fell within this description, and there is no evidence relative to the ultimate disposition of the articles.

We find that the charges are not shown to have been improperly assessed, and the complaint will be dismissed.

No. 8219.

D. M. KEETON

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF
TEXAS ET AL.

Submitted December 1, 1915. Decided May 2, 1916.

A less-than-carload shipment of household goods from Athens, Tex., to Washington, D. C., found to have been misrouted by the initial carrier. Reparation awarded.

D. M. Keeton for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of Mount Rainier, Md. By complaint, filed August 2, 1915, he alleges that the charges collected by defendants on a less-than-carload shipment of household goods shipped November 16, 1914, from Athens, Tex., to Washington, D. C., were unreasonable. Reparation is asked.

The shipment consisted of one box of household goods and weighed 360 pounds. Charges were collected in the sum of \$8.33, at a rate of \$2.31½ per 100 pounds: \$1.47 from Athens to East St. Louis, Ill.; 84½ cents beyond. A rate of \$1.72 was contemporaneously in effect by way of Galveston, Tex., and the Mallory line or Morgan line. On November 16, 1914, complainant applied to the agent of the St. Louis Southwestern Railway Company of Texas, hereinafter called defendant, at Athens, for the lowest available rate to Washington on a less-than-carload shipment of household goods released to \$10 per 100 pounds valuation. Defendant's agent informed complainant that the rail-and-water rate was \$1.72 per 100 pounds. Complainant accordingly agreed to have his shipment move by the route over which the \$1.72 rate applied and delivered his shipment to defendant for transportation. Defendant's agent made out the bill of lading omitting routing instructions but inserting charges, which were prepaid at the rate of \$1.72 per 100 pounds and an estimated weight of 250 pounds, subsequently corrected to 360 pounds. The shipment moved all rail and the charges were \$2.14 greater than they would have been by the rail-and-water route.

We find that the shipment was made as described; that the St. Louis Southwestern Railway Company of Texas misrouted it; that complainant paid and bore the charges collected; that he was damaged thereby to the extent of the difference between the charges collected and the charges that would have accrued if the shipment had moved through Galveston by rail water and rail, and that he is entitled to reparation in the sum of \$2.14, with interest from December 14, 1914.

An order will be entered accordingly.



No. 8324.

RIEGEL SACK COMPANY

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY ET AL.

Submitted December 1, 1915. Decided May 2, 1916.

Rates charged by defendants on burlap bags from Griffing Station, Jersey City, N. J., to Columbus, Ohio; East St. Louis, Ill.; Salina, Kans.; and other points, not shown to have been unreasonable. Complaint dismissed.

John A. Henderson for complainant.

Arthur W. Rinke and *Charles L. Ewing* for Central Railroad Company of New Jersey.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of burlap bags with its principal office in New York, N. Y., and a factory at Griffing Station, Jersey City, N. J., served by the Central Railroad Company of New Jersey, hereinafter called the Central. By complaint, filed September 15, 1915, it alleges that the rates charged by defendants for the transportation of certain carload shipments of burlap bags from Griffing Station to various points in Ohio, Indiana, Illinois, Missouri, Kansas, and Colorado, during 1912, were unreasonable and unjustly discriminatory. Reparation is asked and the establishment of reasonable and nondiscriminatory rates for the future. Claims for reparation on all but three of the shipments

were presented to the Commission informally March 21, 1914, less than two years after the shipments were delivered.

The record shows 14 shipments aggregating 448,250 pounds of burlap bags to Columbus, Ohio; 1 shipment of 30,000 pounds to Waukegan, Ill.; 2 shipments aggregating 67,000 pounds to East St. Louis, Ill.; 1 shipment of 33,000 pounds to Terre Haute; 1 shipment of 30,080 pounds of burlap bags and 3,700 pounds of cotton bags to Sweet Springs, Mo.; 1 shipment of 31,500 pounds of burlap bags to Salina, Kans.; and 1 shipment of cotton-lined burlap bags weighing 36,900 pounds to Fort Collins, Colo. All of the shipments were routed by complainant by way of the Star Union line, a fast freight line maintained by the Pennsylvania Railroad Company and its connections, through Pittsburgh, Pa., and moved as routed: Central to Nanticoke, Pennsylvania Railroad to Pittsburgh, various carriers beyond. The joint class rates applicable from Griffing Station were charged on the shipments to destinations east of the Mississippi River, and to the river on the three shipments to points farther west. A rate of 27 cents per 100 pounds was charged to Columbus; a rate of 35 cents to Waukegan and Terre Haute; a rate of 41 cents to East St. Louis; a rate of 41 cents plus 16 cents, based on East St. Louis, on burlap bags to Sweet Springs, and a rate of \$1.08 on cotton bags; a rate of 41 cents plus 48 cents, based on East St. Louis, to Salina; a rate of 59 cents plus 56 cents, based on East St. Louis, to Fort Collins. The charges collected aggregated \$2,621.57. The cotton bags included in the shipment to Sweet Springs were undercharged, as the legal rate was \$1.11 instead of \$1.08. All of the other rates charged were legally applicable over the routes of movement.

Commodity rates applied on burlap bags over nearly all other routes based on the New York-Chicago sixth-class rate of 25 cents, as follows: 20 cents to Columbus, 25 cents to Waukegan and Terre Haute, 29 cents to East St. Louis, and were subsequently established over the route of movement. No other evidence is offered against the rates charged.

The rates asked were available to complainant by other routes than the route which it directed, including routes in which the Central participated, and apparently were subsequently published over the route of movement solely for competitive reasons. The rates charged can not be found unreasonable upon this evidence, and the complaint will be dismissed.

No. 6390.
MEMPHIS FREIGHT BUREAU
v.
**ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.**

Submitted May 8, 1915. Decided May 9, 1916.

No. 7250.
SHREVEPORT CHAMBER OF COMMERCE ET AL.
v.
ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted December 9, 1915. Decided May 9, 1916.

1. Upon complaint of the Memphis Freight Bureau, in No. 6390, the class rates from Memphis to points in southern Arkansas and Louisiana found to be unjust and unreasonable in so far as they exceed the mileage scale herein prescribed.
2. Class rates from Memphis to points in southern Arkansas and Louisiana found to unjustly discriminate against Memphis to the undue preference of St. Louis. Appropriate class differentials Memphis under St. Louis prescribed.
3. Combinations which make lower than through rates should not be exceeded, even though the factors comprising the combination are governed by different classifications.
4. Carriers are expected to revise their commodity rates in harmony with the determination reached in regard to class rates.
5. In No. 7250 the findings in No. 6390 are adopted with respect to the rates from Memphis to Shreveport and Alexandria, La.; the St. Louis differentials over Memphis on traffic from St. Louis to Shreveport and Alexandria; and the principle to be applied under the fourth section. In addition, the rates from Kansas City and from points in defined territories and in eastern seaboard territory to Shreveport and Alexandria are considered and passed upon.

T. K. Riddick and J. S. Davant for complainants in No. 6390.
Borders, Walter & Burchmore for complainants in No. 7250.
E. F. Hollies for Texarkana Freight Bureau.
Theodore Brent and J. A. Smith for New Orleans Joint Freight Bureau.

A. F. Versen for Business Men's League of St. Louis.
E. P. Gaines for the cities of Marshall and Jefferson, Tex.
T. M. Henderson for Traffic Bureau of Nashville.

F. H. Wood, Denegre, Leovy & Chaffe, F. G. Wright, S. H. West, E. A. Haid, J. M. Souby, George Thompson, W. F. Dickinson, R. Walton Moore, E. H. Hart, C. D. Drayton, J. B. Payne, J. E. Johansen, C. W. Owen, Baker, Botts, Parker & Garwood, F. W. Gwathmey, C. S. Burg, Edgar Moulton, C. Schonfelder, jr., G. H. Hamilton, and J. E. Allen for defendants.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

These cases are closely related and will be disposed of in one report. We shall refer first to the complaint in No. 6390.

By complaint, filed December 4, 1913, and amended April 11, 1914, the Memphis Freight Bureau alleges that class and commodity rates from Memphis, Tenn., to points in southern Arkansas and Louisiana are unjust, unreasonable, and unjustly discriminatory as compared with the rates to the same destinations from St. Louis, Vicksburg, New Orleans, and points in Arkansas from which intrastate rates apply. Because of the interrelation of rates to points specifically set forth with rates to near-by points, the complaint in effect puts in issue the rates from Memphis to practically all points in southern Arkansas and Louisiana. Complainant also alleges that the rates on cotton and certain other commodities from Louisiana points to Memphis are unreasonable and unjustly discriminatory.

The Texarkana Freight Bureau, intervener, asks that no higher rates be established to Texarkana than to Shreveport, and that if reductions are ordered from Memphis to Texarkana, like reductions be ordered from points in central freight association and western trunk line territories. The New Orleans Board of Trade and New Orleans Cotton Exchange intervened in support of defendants.

GENERAL CONSIDERATION OF REASONABLENESS OF MEMPHIS OUT-BOUND RATES.

Of the southern Arkansas and Louisiana destinations herein involved, the most important are Texarkana, Ark., and Shreveport, Monroe, and Alexandria, La., the last three of which comprise the Shreveport group. The rates to these points are shown in the following table and, for comparative purposes, the rates for like distances, prescribed by the Commission in *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 26 I. C. C., 520; *Railroad Commission of Louisiana v. St. L. S. W. Ry. Co.*, 34 I. C. C., 472; *Iowa State Board of Railroad Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 193 and 563, and rates from Memphis to certain Oklahoma destinations.

Rates from Memphis to southern Arkansas and Louisiana compared with rates from Oklahoma to Texas, Shreveport, La., to Texas, Iowa to Kansas and Nebraska, and Memphis to Oklahoma.

Stations from or to which rates apply.	Distance.	1	2	3	4	5	A	B	C	D	E
	<i>Miles.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
Memphis to Texarkana, Ark...	290	117	101	88	76	60	63	50	42	35	29
Oklahoma points to Texas points (mileage scale, 26 I. C. C., 520).....	281-300	89	78	67	57	45	46	42	35	27	21
Shreveport, La., to Texas points (mileage scale, 34 I. C. C., 472).....	281-290	88	77	66	61	45	47	42	37	25	20
Iowa points to Kansas and Nebraska points (mileage scale, 28 I. C. C., 193, 563).....	281-300	77	65	51	39	31	25	27	23	19	15
Memphis to Howe, Okla.....	295	100	85	65	49	39	41	34	29	26	23
Memphis to Shreveport, La.....	321	117	101	88	76	60	62	50	42	35	29
Oklahoma points to Texas points (mileage scale, 26 I. C. C., 520).....	301-330	94	82	70	59	47	48	44	37	29	24
Shreveport, La., to Texas points (mileage scale, 34 I. C. C., 472).....	321-340	95	85	72	63	49	50	46	38	29	23
Iowa points to Kansas and Nebraska points (mileage scale, 28 I. C. C., 193, 563).....	321-340	83	70	55	42	33	37	29	25	21	17
Memphis to Red Oak, Okla.....	322	103	85	68	52	42	45	35	29	24	20
Memphis to Monroe, La.....	239	117	101	88	75	60	62	50	42	35	29
Oklahoma points to Texas points (mileage scale, 26 I. C. C., 520).....	221-240	78	68	59	50	42	43	38	32	24	19
Shreveport, La., to Texas points (mileage scale, 34 I. C. C., 472).....	231-235	77	70	60	58	43	44	39	33	23	17
Iowa points to Kansas and Nebraska points (mileage scale, 28 I. C. C., 193, 563).....	221-240	68	57	45	34	27	30	24	19	17	14
Memphis-Blue Mountain, Ark.....	239	83	71	59	44	35	37	31	26	21	16
Memphis to Alexandria, La.....	339	117	101	88	75	60	62	50	42	35	29
Oklahoma points to Texas points (mileage scale, 26 I. C. C., 520).....	331-360	98	85	72	62	49	50	46	38	30	24
Shreveport, La., to Texas points (mileage scale, 34 I. C. C., 472).....	321-310	18	85	72	63	49	50	46	38	29	23
Iowa points to Kansas and Nebraska points (mileage scale, 28 I. C. C., 193, 563).....	321-340	83	70	55	42	33	37	29	25	21	17
Memphis to Wilburton, Okla.....	335	110	90	75	58	45	47	39	30	25	20
Memphis to Shreveport group.....	1284	117	101	88	75	60	62	50	42	35	29
Oklahoma points to Texas points (mileage scale, 26 I. C. C., 520).....	1281-340	89	78	67	57	45	46	42	35	27	21
Shreveport, La., to Texas points (mileage scale, 34 I. C. C., 472).....	1291 00	89	78	67	61	45	47	42	36	26	20
Iowa points to Kansas and Nebraska points (mileage scale, 28 I. C. C., 193, 563).....	1281 300	77	65	51	39	31	25	27	23	19	15
Memphis to Howe, Okla.....	1295	100	85	65	49	39	41	34	29	26	23

Average.

Complainant used for comparison with the rates herein under attack the mileage scale prescribed in *Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., supra*. A more appropriate basis for comparison is afforded by the mileage scales prescribed in *Corporation Commission of Oklahoma v. A. & S. Ry. Co., supra*, hereinafter designated the *Oklahoma Case*, and *Railroad Commission of Louisiana v. St. L. S. W. Ry. Co., supra*, commonly known as the *Shreveport Case*. The scale in the *Oklahoma Case* was prescribed as a maximum for rates from Oklahoma into Texas. The scale prescribed in the *Shreveport*

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Case applies to movements over one line or system from Shreveport, La., to points in Texas and from points in eastern Texas toward Shreveport. For hauls over two or more lines not under one management and control carriers are permitted under the findings in the *Shreveport* and *Oklahoma Cases* to add to the mileage rates prescribed the following amounts per 100 pounds:

Classes.....	1	2	3	4	5	A	B	C	D	E
Rates.....	8	7	6	5	4	4	4	3	2	2

The rates prescribed in the *Shreveport* and *Oklahoma Cases* which are herein used for comparison are in each instance for one-line hauls.

It will be observed that the class rates from Memphis to Texarkana and the Shreveport group are considerably higher for like distances than those prescribed in the *Shreveport Case* and *Oklahoma Case*, which, in turn, are higher, except in a few classes, than the class rates for like distances from Memphis to Oklahoma destinations. The rates from Memphis to Texarkana and the Shreveport group are below the level of rates from Memphis to other southern Arkansas and Louisiana destinations. The class rates from Memphis to a large number of smaller points, some of which are intermediate to Shreveport, Monroe, and Alexandria, are on a considerably higher scale.

A map is included herewith to show the location of the points named in the report. It will be observed that Shreveport, Monroe, and Alexandria are the corners of a triangle, bounded by lines of railroad. The class rates from Memphis to those three points, as is shown in the table above, are on a 117-cent scale. The rates to points on the Vicksburg, Shreveport & Pacific Railroad, which bounds the triangle on the north, are on the same scale. However, the rates to points north of this line are in some instances higher than to the Shreveport group, as is illustrated by the first-class rates shown in the following table. In each instance the line on which the point is located, its distance from Memphis, and for comparison the first-class rates for like distances prescribed in the *Oklahoma* and *Shreveport Cases*. are also shown:

First-class rates Memphis to Louisiana destinations north of the line of the V., S. & P. compared with mileage scales in Oklahoma and Shreveport cases.

From Memphis to—	Delivering carrier.	Miles.	Rate.	Mileage scale, Oklahoma case, 26 I. C. C. 520.		Mileage scale, Shreveport case, 34 I. C. C., 472.	
				Miles.	Rate.	Miles.	Rate.
Gilliam, La.....	T. & P.....	338	Cents. 137	331-360	Cents. 98	341-360	Cents. 93
State Line, La.....	L. & N. W.....	262	127	261-280	96	261-270	85
Minden, La.....	L. & A.....	310	127	301-330	94	301-320	94
Lamkin, La.....	St. L., I. M. & S.....	247	127	241-260	82	246-250	80

Some of the points north of the line of the Vicksburg, Shreveport & Pacific are on a lower basis than those shown above, but with the exception of rates to points near the Mississippi River which reflect water competition all are on a relatively high basis as compared with the mileage scales referred to.

To points on the lines of carriers connecting Alexandria with Shreveport and Monroe, the rates are also in many instances higher than to the Shreveport group, likewise to points within the triangle bounded by the carriers connecting Shreveport, Monroe, and Alexandria. This is illustrated by the rates shown in the following table:

First-class rates from Memphis to Louisiana destinations on lines connecting Alexandria, La., with Shreveport and Monroe, La., compared with mileage scales in Oklahoma and Shreveport cases.

From Memphis to—	Delivering carrier.	Miles.	Rate.	Mileage scale, Oklahoma case, 26 I. C. C., 520.		Mileage scale, Shreveport case, 34 I. C. C., 472.	
				Miles.	Rate.	Miles.	Rate.
			<i>Cents.</i>		<i>Cents.</i>		<i>Cents.</i>
Lucas, La.....	T. & P.....	331	137	331-360	98	321-340	98
Natchitoches, La.....	do.....	376	137	361-400	102	361-380	102
Boyce, La.....	do.....	371	117	361-400	102	361-380	102
Bosco, La.....	St. L., I. M. & S.....	254	127	241-280	82	251-280	82
Columbia, La.....	do.....	268	127	261-280	86	261-270	85
Georgetown, La.....	do.....	299	133	281-300	89	291-300	89
Hedfin, La.....	L. & A.....	321	127	301-330	94	321-340	98
Pratt, La.....	L. & N. W.....	305	127	301-330	94	301-320	94
Blenheim, La.....	L. R. & N.....	327	137	301-330	94	321-340	98

It is interesting to note that to points in Louisiana south of Alexandria and farther distant from Memphis the class rates are also considerably in excess of the mileage scale prescribed in the *Oklahoma and Shreveport Cases, supra*. This is illustrated by the comparison of first-class rates shown below.

Comparison of first-class rates, Memphis to Louisiana destinations, with rates for like distances, Oklahoma to Texas and Shreveport, La., to Texas destinations.

From Memphis to—	Miles.	Rate.	Mileage scale, Oklahoma case, 26 I. C. C., 520.		Mileage scale, Shreveport case, 34 I. C. C., 472.	
			Miles.	Rate.	Miles.	Rate.
		<i>Cents.</i>		<i>Cents.</i>		<i>Cents.</i>
Lake Charles, La.....	435	130	401-450	106	401-450	106
Grosse Tete, La.....	422	137	401-450	106	401-450	106
Labadieville, La.....	475	105	401-450	106	401-450	106
Bastile, La.....	404	137	401-450	106	401-450	106
Cholpe, La.....	413	130	401-450	106	401-450	106
Zimmer, La.....	380	137	361-400	102	381-400	102
Eunice, La.....	393	130	361-400	102	381-400	102
De Ridder, La.....	416	130	401-450	106	401-450	106
Bunkie, La.....	368	130	361-400	102	361-380	102

The only Memphis rates herein involved which are upon a lower basis than the mileage scales above referred to are to points on or
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close to the Mississippi River which reflect water competition. The class rates from Memphis to points directly on the Mississippi River are on a 50-cent scale, the same as from Memphis to New Orleans, La. To points not directly on but near the Mississippi the rates, although on a higher basis, are frequently lower than the general level prevailing at other Louisiana points. A large number of comparisons made by complainant, some of which were intended primarily to show the existence of unjust discrimination, also bear upon the unreasonableness of the Memphis rates under complaint, but will not be referred to at this point.

In support of their contention that the present rates from Memphis are just and reasonable carriers make comparisons with rates involved in a number of the Commission's decisions. Thus they compare the rates from Memphis to Texarkana, Ark., with rates for like distances dealt with in *Williams Co. v. V., S. & P. R. R. Co.*, 16 I. C. C., 482; *Chamber of Commerce of Houston v. I. & G. N. Ry. Co.*, 32 I. C. C., 247; *Chamber of Commerce of Houston v. H. E. & W. T. R. R. Co.*, 32 I. C. C., 203, and with class rates from New Orleans to Waskom, Tex. These comparisons are shown in the following table:

Points to and from which rates apply.	Distance.	First-class rate.	Opinion of Commission.
	<i>Miles.</i>	<i>Cents.</i>	
Memphis to Texarkana, Ark.....	290	117	
Vicksburg, Miss., to—			
Waskom, Tex.....	192	137	} <i>Williams v. V., S. & P. R. R. Co.</i> , 16 I. C. C., 482.
Cason, Tex.....	259	137	
Winnsboro, Tex.....	288	137	
Silver Lake, Tex.....	290	137	
Grand Saline, Tex.....	297	137	
Houston to interior Louisiana points.....		137	} <i>Chamber of Commerce of Houston v. I. & G. N. Ry. Co.</i> , 32 I. C. C., 247.
Houston to Stamps, Ark.....	297	124	
New Orleans to Waskom, Tex.....	330	137	} <i>Chamber of Commerce of Houston v. H. E. & W. T. Ry. Co.</i> , 32 I. C. C., 203.

An examination of the cases referred to above shows that in each case complainant's prayer, if granted, would have carried with it a much more extensive change in rates than that immediately contemplated, and the Commission in each case rested its decision largely upon the fact that the record was not sufficient for a determination involving so widespread a change. In the *Williams Case, supra*, the rates from Vicksburg to certain points in the extreme northeastern portion of Texas were attacked as unjust and unreasonable, and the Commission in its opinion pointed out that the points selected are in a group almost due west of Vicksburg and are the nearest points to Vicksburg of any of the Texas common points. On page 486 of its opinion the Commission said:

The rates from Vicksburg to certain selected Texas common points only are alleged to be unlawful. Vicksburg rates apply not only to those near-by and almost air-line 89 I. C. C.

points, but to all Texas common points, and no transportation or commercial necessity has been shown for segregating these points and establishing rates to them from Vicksburg.

Waco, Tex., was taken as the center of the Texas common-point group in *Dallas Freight Bureau v. M., K. & T. Ry. Co.*, 12 I. C. C., 427, and in *Williams Co. v. V., S. & P. Ry.*, *supra*. The 137-cent scale applies to all Texas common points and the distance from Vicksburg to Waco is 412 miles, while the distances used by defendants for comparison range from 192 to 330 miles. In *Chamber of Commerce of Houston v. I. & G. N. Ry. Co.*, *supra*, the Commission permitted the 137-cent scale to be used only as a maximum in the revision of rates from Houston to interior Louisiana points. The rates to many Louisiana points are on a considerably lower basis. The distance from Houston to interior Louisiana points is about the same as the distance from Memphis to Texarkana. The following quotation from *Chamber of Commerce of Houston v. H. E. & W. T. Ry. Co.*, 32 I. C. C., 203, 205, shows the considerations upon which the Commission based its conclusion not to disturb the 124-cent scale from Houston to Stamps, Ark.:

The effect of an order of the nature desired by complainant necessarily would be either a general reduction in the rates from the Texas common points to Arkansas or the destruction of the common-point group to that state at least and the establishment of rates from the various common points on a mileage basis. To justify the Commission in ordering so general a readjustment it should be shown not only that the conditions of transportation from Houston and from the points alleged to be unduly preferred are substantially similar, but that the present adjustment results in undue prejudice and disadvantage to Houston and its shippers. Upon the facts of record we are not of opinion that the conditions of transportation from the respective points of origin have been shown to be substantially similar, and in the absence of proof of unreasonableness in the rates from Houston we are unable to find that the maintenance of the Texas blanket on Arkansas traffic is unreasonable or results in unjust discrimination against Houston. The complaint will therefore be dismissed. It will be so ordered.

The defendants also call attention to the mileage scale used as a maximum in *In re Fourth Section Violations in the Southeast*, 30 I. C. C., 153. That scale governed by southern classification is as follows for one-line hauls of 300 miles:

Classes.....	1	2	3	4	5	6	A	B	C	D	E	H	F
Rates.....	96	84	69	63	51	45	38	38	31	25	46	55	52

Defendants argue that since the average revenue per ton-mile in the southwest is 132 per cent of the average revenue per ton-mile in the southeast, according to the statistical report of the Commission for 1910, it would be fair to construct rates for the southwest by applying this percentage to the rates prescribed in the southeast. On that basis defendants constructed a 127-cent scale for 300 miles and argue that the result shows the present 117-cent scale from Memphis to Texarkana for approximately the same distance to be just

and reasonable. It must be remembered, however, that the mileage scale in the *Southeastern Case, supra*, was prescribed as a maximum to be applied at intermediate noncompetitive points in southeastern and Mississippi Valley territory, and that it was arrived at by ascertaining the average of rates maintained for like distances to the noncompetitive points in this territory. It by no means represents the average of all rates maintained for like distances in the territory involved. Nor was this scale approved by us except as a usable measure of intermediate rates. No more satisfactory measure was suggested in that proceeding and nothing else which properly could be used appeared to be available. In fact the comparison in our opinion tends to show the unreasonableness of the rates under complaint. A comparison of rates from Memphis to Monroe, La., Hope, Ark., Texarkana, Ark., and Shreveport, La., with rates for like distances from Memphis to certain points in the Mississippi Valley and the southeast made by complainant is more in point. It is shown in part in the following table:

Comparative statement of mileages and class rates from Memphis.

To—	Classification.	Miles.	1	2	3	4	5
			<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
Jackson, Miss.....	Southern.....	211	83	71	60	50	42
Monroe, La.....	Western.....	239	117	101	88	75	60
Hope, Ark.....	.....do.....	247	117	101	88	75	60
Meridian, Miss.....	Southern.....	249	83	71	60	50	42
Birmingham, Ala.....	.....do.....	251	87	72	61	52	42
Texarkana, Ark.....	Western.....	290	117	101	88	75	60
Chattanooga, Tenn.....	Southern.....	311	76	65	57	47	40
Shreveport, La.....	Western.....	321	117	101	88	75	60
Montgomery, Ala.....	Southern.....	347	94	83	74	58	46
Atlanta, Ga.....	.....do.....	418	103	88	77	64	52

Rates to points east of the Mississippi with which comparisons are made in the table above are in all cases somewhat below the mileage scales prescribed in the *Oklahoma* and *Shreveport Cases, supra*.

The comparisons made with the mileage scales prescribed in the *Shreveport* and *Oklahoma Cases* are sufficient to show that the present rates from Memphis to southern Arkansas and Louisiana are mutually inconsistent. In making rate comparisons, the differences in operating conditions and traffic density in the respective territories in which the rates apply should be considered. However, so wide a spread as has been shown to exist between the Memphis rates and the rates prescribed for like distances in the *Shreveport* and *Oklahoma Cases* can not be explained upon that ground. A definite determination as to the rates which should be applied in the future will follow under the section headed, "rates to specific destinations and groups."

RATES PROPOSED BY COMPLAINANT.

While the present Memphis rates are plainly unjust and unreasonable the rates proposed by complainants are in many instances equally unreasonable. Complainant urges a revision of the rates in issue on several bases. To southern Arkansas points it suggests rates predicated on the Arkansas state rates. The present class rates from Memphis are on a scale 30 cents below the rates from St. Louis to Little Rock, Ark., while to points in southern Arkansas and Louisiana the differentials Memphis below St. Louis are in general upon a 10-cent scale. By subtracting the Little Rock differentials from the present rates from St. Louis to southern Arkansas and Louisiana complainant arrives at a second basis for revision. To many destinations in northern Louisiana and southern Arkansas the rates from New Orleans are lower, although the distances are greater than from Memphis. Complainant calls attention to the New Orleans rates as a third basis for revision and submits as a fourth basis the combinations on Vicksburg, New Orleans, Port Allen, and other Mississippi River points which are in many cases lower than the through rates from Memphis to Louisiana destinations.

The rates which complainant proposes as just and reasonable are in each instance determined by that basis which makes the lowest rates. This is properly made the ground for criticism by the defendants, who allege that the rates arrived at are entirely without system or logic. Thus the class rates proposed by complainant from Memphis to Texarkana and Shreveport are on an 83 and 60 cent scale, respectively, although these points are very nearly the same distances from Memphis. The Commission held in *Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 569, that class rates from Memphis to Texarkana should not exceed the rates contemporaneously maintained to Shreveport. The lack of harmony in the rates suggested by complainant results from the fact that in all cases it proposes to remove alleged unjust discriminations by decreasing the Memphis rates, although in some cases it might be more appropriate not to disturb the Memphis rates but to increase the rates from the point unduly preferred.

But while the various bases submitted by the complainant for a revision of rates can not in all instances be adopted as a measure of what the Memphis rates should be, they nevertheless merit consideration because they bear upon the question of undue discrimination.

COMPARISON WITH ARKANSAS INTRASTATE RATES.

The Arkansas state rates with which complainant compares rates from Memphis to southern Arkansas were provided by Arkansas
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Standard Distance Tariff No. 3, the enforcement of which has since been enjoined as regards the St. Louis & San Francisco Railroad by order of the federal courts. The other Arkansas carriers have also filed petitions to enjoin the enforcement of the state rates, which are now pending in the courts. The testimony does not show that the rates in effect pending the decision of the court unduly discriminate against Memphis. In *City of Memphis v. C., R. I. & P. Ry. Co.*, Docket No. 7304, the same complainant attacks the rates from Memphis to Arkansas points generally as related to the Arkansas state rates. Both complainant and defendants refer to the testimony and arguments presented in that case, and we believe that the question of whether the Arkansas state rates occasion undue discrimination should be left for decision in that proceeding.

COMPARISON WITH RATES FROM ST. LOUIS, MO.

Complainant's contention that the Little Rock differentials of 30 cents Memphis under St. Louis should be observed in the rates from Memphis and St. Louis to points south of Little Rock in Arkansas and Louisiana is based, first, upon an alleged agreement to that effect between the St. Louis, Iron Mountain & Southern Railway and the city of Memphis. Complainant acknowledges that this Commission could not lawfully be asked to enforce the terms of this agreement, but argues that the recognition of the reasonableness of such a relationship by the St. Louis, Iron Mountain & Southern at the time the alleged agreement was reached raises a strong presumption that this relationship is just and reasonable.

The distances and class rates from St. Louis and Memphis to Little Rock are as follows:

To Little Rock from—	Dis- tances.	1	2	3	4	5	A	B	C	D	E
	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
St. Louis.....	346	100	85	65	49	37	30	32	27	23	18
Memphis.....	133	70	60	45	36	27	29	22	18	15	12
Difference.....	213	30	25	20	13	10	10	10	9	8	6

Class differentials on a 30-cent scale Memphis under St. Louis have been maintained for a long time at Little Rock. The rates from Memphis to Arkansas destinations generally as compared with rates from St. Louis to the same destinations are attacked in *City of Memphis v. C., R. I. & P. Ry. Co.*, Docket No. 7304, and the propriety of the present differentials at Little Rock and other Arkansas points not specifically set forth in the complaint will therefore be left for determination in that case. The discussion in this case is limited to points in southern Arkansas and Louisiana. The rates to Texarkana, the Shreveport group, and Lake Charles, La., may be taken as illustrative
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for the purpose of comparing Memphis with St. Louis rates. The rates and distances to these points are as follows:

Class rates and distances.

	Miles.	1	2	3	4	5	A	B	C	D	E
To Texarkana from—											
St. Louis.....	490	Cts. 127	Cts. 111	Cts. 96	Cts. 82	Cts. 65	Cts. 69	Cts. 55	Cts. 47	Cts. 41	Cts. 34
Memphis.....	290	117	101	88	75	60	62	50	42	36	29
Difference.....	200	10	10	8	7	5	7	5	5	5	5
To Shreveport group from—											
St. Louis.....	¹ 554	127	111	96	82	65	69	55	47	41	34
Memphis.....	¹ 298½	117	101	88	75	60	62	50	42	36	29
Difference.....	255½	10	10	8	7	5	7	5	5	5	5
To Lake Charles, La., from—											
St. Louis.....	698	140	119	99	91	71	75	67	55	45	39
Memphis.....	435	130	110	91	84	66	68	62	50	40	34
Difference.....	263	10	10	8	7	5	7	5	5	5	5

¹ Average distance.

It will be observed that the differentials Memphis under St. Louis are in each case on a 10-cent scale. The same differentials are maintained in the rates from Memphis and St. Louis to Texas common points. Complainant argues that Memphis should have greater differentials to southern Arkansas and Louisiana than to Texas, because to the former the Memphis distance is a smaller percentage of the St. Louis distance than to the latter; because, at the river crossings such as Vicksburg, Natchez, Port Allen, and New Orleans, the differentials Memphis under New Orleans are greater than at southern Arkansas and Louisiana points generally; and because the rates to St. Louis from representative points east of the Mississippi River and north of the Ohio are lower than the rates to Memphis by amounts which exceed the 10-cent scale.

On behalf of defendants it is argued that no change should be made in the present relationship of rates from Memphis and St. Louis to southern Arkansas and Louisiana destinations because of the disturbance which would result in the entire territorial adjustment of rates from Memphis and St. Louis and from defined territories through these gateways to the southwest. Although this argument was based largely upon the rates proposed by complainant, which we have characterized in some respects as unreasonable, it applies to any change which might be made in the relationship of the Memphis and St. Louis rates.

Western trunk line territory, central freight association territory, Mississippi Valley territory, and southeastern territory are divided into a series of groups of origin from which rates to Texas common points are made by the application of stated differentials above or below the rates from St. Louis. Defendants allege that to southern Arkansas

and Louisiana rates are made with relation to the Texas common-point rates both with respect to the basing rate from St. Louis and the rates from the territorial groups of origin. Defendants state that it is natural and proper that the same general scheme of rate making should apply to all of the southwestern territory. They allege that it is essential that the rates to Texarkana and Shreveport, each of which is near the border of Texas common-point territory and both of which are important gateways for Texas traffic, should properly be related to the rates to Texas common points. By extensive exhibits filed upon the hearing defendants show that the proposed rates, especially the commodity rates, from Memphis to Texarkana and Shreveport when combined with the rates from those points to Texas common points would result in combinations considerably lower than the through rates from Memphis and from a large number of points of origin in defined territories. They further show that a change would result in the rate relationship of points in defined territories on traffic to Louisiana and Texas points. The exhibits filed by defendants show that class rates proposed by complainant from Memphis to Texarkana and Shreveport when combined with class rates from defined territories to Memphis and from Texarkana and Shreveport to Texas common points make lower combinations than the through rates on some of the classes from Pittsburgh and other points on the eastern border of defined territories.

Rates from Memphis to Texarkana and Shreveport, however, can not be regarded merely as segments of through rates. While Memphis is an important gateway to the southwest, it is also an important originating and distributing center and is entitled to rates which are reasonable and nondiscriminatory. The average distance from Memphis to Texas common points far exceeds the distances from Memphis to the majority of the points herein involved and forms a considerably larger proportion of the St. Louis distances. The distances from Memphis and St. Louis to Waco, Tex., which, as stated above, is approximately the center of Texas common-point territory, and to Texarkana, the Shreveport group, and Lake Charles, La., and the proportion in each case which the Memphis distance bears to the St. Louis distance is given in the following table:

To—	From St. Louis.	From Memphis.	Proportion distance Memphis to St. Louis.
	Miles.	Miles.	Per cent.
Waco, Tex.	748	548	73
Texarkana, Ark.	490	290	59
Shreveport group.	554½	298½	54
Lake Charles, La.	666	435	63

When the average distance and the percentage relationship of the distances from Memphis and St. Louis are considered the differentials Memphis under St. Louis to Texas common points appear to be reasonable. To southern Arkansas and Louisiana points, however, differentials on a somewhat higher scale would be more appropriate, because the Memphis distance is a considerably lower percentage of the St. Louis distance than in the movement to Texas points. This conclusion is strengthened when we consider the present differentials St. Louis under Memphis from points in defined territories shown in the table below:

From—	To Memphis.	To St. Louis.	Percentage Memphis of St. Louis distance.	First-class rates.		
				Memphis.	St. Louis.	Differential.
	<i>Miles.</i>	<i>Miles.</i>	<i>Per cent.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
New York, N. Y.....	1,157	1,065	92	109	92.2	16.8
Pittsburgh, Pa.....	807	621	77	91	59.3	31.7
Cleveland, Ohio.....	757	548	72	91	55.3	35.7
Detroit, Mich.....	743	488	66	91	48.3	42.7
Chicago, Ill.....	527	284	54	85	45.5	39.5
Cincinnati, Ohio.....	494	341	69	75	43.1	31.9
Indianapolis, Ind.....	490	240	49	79	39.9	39.1
Louisville, Ky.....	380	274	72	65	42.1	22.9

When the percentage relationship of the distances shown in this table and the corresponding first-class differentials St. Louis under Memphis are compared with the percentage relationships of the distances from Memphis and St. Louis to southern Arkansas and Louisiana, shown in the next preceding table, and for which a differential of only 10 cents first class is maintained, the unjust discrimination against Memphis and the undue preference in favor of St. Louis in the rates at present in effect becomes apparent. A differential on a 20-cent scale, we believe, is proper at Texarkana, Ark., and this difference should be gradually decreased with increased distance until a differential on a 10-cent scale is reached at Lake Charles, La.

COMBINATIONS LOWER THAN THROUGH RATES.

As a general rule, through rates in excess of the combination of intermediate rates are regarded as prima facie unreasonable. Where specific rates governed by the same classification are published on a commodity to and from a given point, there can be no question that the rates from point of origin to ultimate destination should not exceed the combination of intermediate rates. Rates higher than the combinations would be in violation of section 4 of the act to regulate commerce. However, the instant case differs from the

ordinary fourth section case in that it falls within two classification territories. The rates from Memphis to lower Mississippi River points are governed by the southern classification, while the rates beyond are governed by the western classification. It is well known that the classes in the three classifications do not coincide with one another. As to the articles classified alike in both southern and western classifications, the through combination rate would exactly equal the combination of the two class rates if all other conditions affecting the classification were the same. The latter, however, is not always the case. As defendants point out, commodity descriptions and classification rules and regulations governing shipments under class rates vary in the different classifications. Progress has been made toward greater uniformity and continued striving to attain this result is to be commended.

It is plain that the rates on specific articles and not the rates for a particular class or commodity description must in each case be consulted before the combination rates can be ascertained and that all the rules and regulations affecting the charge in each territory must be complied with before the through combination of charges can be applied; but that combinations of the rates applying on specific articles can be made is not denied, and the defendants admit in their brief that "some of the through rates are now higher than such combinations."

While the defendants appear to be in full accord with the general principle that through rates should not be in excess of the aggregates of intermediate rates, they contend that where through traffic is handled partly in one classification territory and partly in another this general rule should not be applied. It is contended that the fact that there are articles upon which actual combination rates made by applying the two classifications and their several and varying rules and regulations are lower than the published through charges does not with respect to this traffic make even a *prima facie* case of unreasonableness. Defendants state that even where a given article is rated only one class higher in western than in official or southern classification through rates governed by western classification will invariably exceed the actual combination of charges unless the application of the varying rules and regulations of the classification offset the difference in the classification ratings. This is said to be true not merely from Memphis to Shreveport, but wherever through rates governed by a single classification are published from one classification territory to another. It is argued that both classifications can not apply; that one must give way to the other; that if, nevertheless, actual combinations must be protected by specific commodity rates, all through class rates might as well be canceled.

Defendants' position is that the Commission should not order the establishment of any rate upon the basis of combinations made upon two separate classifications except where the rate is otherwise shown to be unreasonable.

Section 4 of the act to regulate commerce specifically provides—
that it shall be unlawful for any common carrier subject to the provisions of this act * * * to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this act.

The difficulty of complying with the law because of lack of uniformity in the three classifications can not be accepted as an excuse for existing violations. Further, it does not appear that defendants are correct in their assertions that the traffic affected is small and unimportant and that a change would merely effect a compliance with the letter of the law without remedying any existing injustice. The testimony shows that a number of Memphis concerns have found it necessary to establish agencies at Vicksburg or New Orleans in order to ship goods to Louisiana points on the Vicksburg or New Orleans combination. The advantage which jobbers or manufacturers located at points on the border of the classification territories would enjoy if their competitors were forced to pay through rates higher than the combination on the border-line point is obvious. To illustrate the extent to which the through rates exceeded the combinations on Vicksburg or New Orleans complainant filed the following exhibit:

Statement showing the through published rates and combinations on Vicksburg from Memphis to points on the Vicksburg, Shreveport & Pacific Railway in Louisiana.

From Memphis to—	Electrical fixtures.		Dry goods.		Cotton piece goods, any quantity.		Oilecloth.	
	Through rate.	Vicksburg combination.	Through rate.	Vicksburg combination.	Through rate.	Vicksburg combination.	Through rate.	Vicksburg combination.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Quebec, La.	117	90	117	90	65	50	101	73
Delhi, La.	117	90	85	90	50	52	101	73
Holly Ridge, La.	117	90	117	90	65	52	101	73
Rayville, La.	117	90	117	90	65	52	101	73
Magenta, La.	117	95	117	95	65	52	101	75
Monroe, La.	117	110	105	110	55	57	90	90
Tremont, La.	117	110	105	110	65	57	101	90
Ruston, La.	117	110	105	110	65	57	90	90
Simsboro, La.	117	110	105	110	65	57	101	90
Arcadia, La.	117	110	105	110	65	57	101	90
Gibbsland, La.	117	110	105	110	65	57	101	90
Shreveport, La.	117	110	105	110	55	57	90	90

Basis for combinations:

Memphis to Vicksburg—

Electrical fixtures and dry goods 50 cents.

Cotton piece goods 27 cents.

Oilecloth 40 cents.

Vicksburg to Vicksburg, Shreveport & Pacific points—

Electrical fixtures and dry goods First class.

Cotton piece goods Commodity rates

Oilecloth Second class.

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This table shows rates on only a few commodities and only to destinations on the Vicksburg, Shreveport & Pacific Railway. A like comparison could be made of the through rates and the combination rates from Memphis to a large number of points throughout the state of Louisiana. In *Class Rates Between Stations in Louisiana*, 33 I. C. C., 302, a situation was presented identical to that here under consideration. Complainant in that case attacked the joint class and commodity rates from St. Louis and defined territories to Lafayette, La., as being higher than the aggregate of the intermediate rates applicable on interstate traffic via Baton Rouge, La. On pages 305 and 306 the Commission held:

To determine whether the fourth section is violated it is not necessary to pass on the disputed question whether any or all classes under the western classification are assimilable to classes under the southern classification. In case it were shown that a through tariff carried on specified articles from St. Louis to Lafayette rates in excess of the sum of rates carried by tariffs from St. Louis to Baton Rouge and proportional rates applicable from Baton Rouge to Lafayette, a violation of the fourth section would be shown. The proof of such violation, however, would require demonstration that the specific article involved is governed by substantially the same tariff provisions under the through tariff as under the tariffs carrying the intermediate rates applicable thereto; and in the absence of such proof of identity in tariff description, etc., it can not be affirmed with certainty that a violation of the fourth section has been shown. This appears to be the situation in the instant case. We are afforded various comparisons of class with class under the two classifications with their respective rates. We are afforded numerous examples of commodity ratings under the through tariff and under the two tariffs applicable via Baton Rouge between the same termini. But the record does not afford unmistakable evidence of the identity of tariff descriptions and accompanying classification requirements, which amount to a demonstration of the alleged violation of the fourth section; although the carriers appear to do at Vicksburg what they say can not be done in the instant case.

Under these circumstances it will be incumbent upon the carriers in conformity with the above findings to compare their through rates upon various articles carried with the aggregate of the intermediate rates applicable, and to bring their through rates into conformity with the requirements of the statute, so that they shall not exceed the aggregate of the intermediate rates.

The above case was closely followed by *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 33 I. C. C., 472, in which the Commission found joint through class rates for the transportation of various articles in less than carloads from Memphis, Tenn., to Kessler, Le Compté, Grosse Tete, and Ferdoche, La., to have been unreasonable to the extent that they exceeded the sums of the intermediate rates based on Port Allen or New Orleans, La., contemporaneously in effect.

In *Through Rates from Buffalo-Pittsburgh Territory*, 36 I. C. C., 325, the Commission held that carriers had not justified the continuance of rates on through shipments from central freight association and Buffalo-Pittsburgh territories to points south of the Ohio and east of the Mississippi rivers which exceed the aggregates of the intermediate rates and denied relief from the provisions of the fourth section.

The cases cited above were all decided since the amendment of the fourth section in 1910 which declared unlawful the maintenance of through rates which exceed the aggregate of intermediate rates subject to the act. Prior to that time the Commission had repeatedly held that through rates exceeding the sum of the intermediates were prima facie unreasonable.

In *Monroe Progressive League v. St. L., I. M. & S. Ry. Co.*, 15 I. C. C., 534, the Commission held that rates via the St. Louis, Iron Mountain & Southern from St. Louis to points in the Shreveport, La., group should be adjusted in such a manner that no rate would exceed the combination on Vicksburg or New Orleans.

These cases are all directly in point, and there can be no doubt that the situation disclosed in the present case constitutes a violation of the act. The fourth section of the act is obviously violated whenever a combination of rates governed by like rules and regulations is lower than the through rate. It may, however, also be violated in cases where the regulations or commodity descriptions in the two classifications vary. If a shipment is offered for transportation in such a manner as to comply with the requirements of both classifications, there can be no question as to the application of the intermediate rates, and the act is violated by a refusal to revise the through rate to the basis of the intermediate rates. The question before us is with regard to the remedy to be prescribed. The adoption of a uniform classification alone would furnish a complete remedy, but obviously that can not be accomplished upon a moment's notice. The publication of specific commodity rates to cover all possible combinations lower than through class rates is also a matter which can not be accomplished at once, nor would it seem to be practicable.

The violations of the fourth section herein complained of are covered by certain fourth section applications filed by carriers asking authority to continue through rates from defined territories to points in Louisiana which exceed the sum of the intermediate rates. These applications have been denied in *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, 160, where the Commission found that—

The publication of a multitude of commodity rates in order to avoid the maintenance of class rates which exceed the aggregates of the intermediate rates is not desirable. The difficulties of avoiding possible or occasional instances in which a joint through rate becomes higher than the aggregate of intermediate rates due to change in some factor of the intermediate rates without immediate knowledge thereof on part of the publisher of the joint through rates are appreciated. The existing rates should be purged of the instances in which the through rates exceed the aggregate of the intermediate rates, and when that has been done, if it shall be felt that some provision should be made against possible instances such as are above referred to, the Commission will be willing to consider applications in special instances for specific authority to include in a tariff a rule providing in substance that upon reasonable application therefor, and upon one day's notice to the Commission and to the public, any

through rate contained in the tariff which exceeds the aggregate of the intermediate rates subject to the act will be revised to the basis of the aggregate of the intermediate rates.

COMPARISON WITH RATES FROM NEW ORLEANS, LA..

Most of the testimony upon this point deals with rates to the Shreveport group. The present first-class rates and the distances from Memphis and New Orleans to the Shreveport group are as follows:

To—	From Memphis.		From New Orleans.	
	Miles.	Rate.	Miles.	Rate.
Shreveport.....	221	Cents. 117	305	Cents. 60
Monroe.....	239	117	292	60
Alexandria.....	336	117	183	60
Average.....	264½	117	264½	60

While the shorter distance from New Orleans to the group would naturally demand a somewhat lower rate than from Memphis, it is evident that the present wide difference can not be justified upon the ground of distance alone. The carriers seek to defend the wide disparity between the Memphis and New Orleans rates on the ground that the latter are water compelled. The testimony shows that the present class rates from New Orleans to Shreveport, Alexandria, and Monroe are the same as those which were maintained by boat on the Red and Ouachita rivers at the time rail carriers first reached these points from New Orleans, and which have ever since been maintained by the rail carriers. There is at present no active water competition from New Orleans to the Shreveport group, and this was recognized by the Commission in *Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 569, 583:

There is no doubt that the rates from the lower Mississippi River crossings to the Shreveport group were originally influenced by active water competition. The extent to which potential water competition should be recognized at the present time is not clear from the record, but the great difference between the rates from lower Mississippi crossings to the Shreveport group and those to points intermediate seems to be unjustifiable. While carriers may properly meet water competition, the maintenance of a lower rate to one point than to other points which are intermediate can not be justified on the ground that it is necessary to suppress water competition.

In defendants' behalf it is asserted that the withdrawal of the water competition on the Red, Black, and Ouachita rivers was due to the failure in recent years of the cotton crop following the invasion of the boll weevil, and it is strongly maintained that with normal crop conditions water competition will be resumed. Extensive exhibits were offered and much testimony was produced to show the

tonnage of river traffic in the past and the height of the water and condition of the rivers during recent years.

However, defendants seem to have recognized that the potential water competition at points in the Shreveport group does not justify rates as far below the rates from New Orleans to intermediate points, or below rates for like distances to the Shreveport group from markets competitive with New Orleans, as those at present in effect. In a proceeding now pending before the Louisiana Railroad Commission, *Louisiana Railroad Commission Case*, No. 2273, the carriers propose to increase the New Orleans rates to an 80-cent scale.

Rates to some of the points east of the Shreveport group are influenced by potential water competition on the Mississippi River. The competition of the Mississippi, however, is just as much to be reckoned with from Memphis as from New Orleans, and does not afford ground for a difference in rates for like distances from these points. Nevertheless, in some instances New Orleans is given lower rates to points near the Mississippi which are approximately the same distance from Memphis and New Orleans. This is especially evident on the line of the St. Louis, Iron Mountain & Southern from Halley, Ark., to Addis, La., as is shown from the distances and first-class rates given in the following table:

To—	Distances.		First-class rates.	
	From Memphis.	From New Orleans.	From Memphis.	From New Orleans.
	<i>Miles.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Waterproof, La.....	284	215	75	52
Somerset, La.....	253	246	60	52
Tallulah, La.....	236	263	60	52
Milliken, La.....	195	304	60	60
Chicot, Ark.....	178	321	60	70
Halley, Ark.....	154	345	60	70

The 60-cent scale from New Orleans is carried as far north as Milliken, La., a distance of 304 miles, to which point the class rates from Memphis for a distance of only 195 miles are also on a 60-cent scale. No reason appears upon the record why the Memphis rates southward should be on a higher scale than the rates contemporaneously applied in the reverse direction for like distances from New Orleans.

COMMODITY RATES.

The record in this proceeding does not permit a determination with regard to the large number of commodity rates set forth in the complaint to the various destinations involved. Carriers will, however, be expected to revise their commodity rates in harmony with our determination in regard to class rates. The revised commodity rates must not exceed the aggregate of intermediate rates.

**RATES TO MEMPHIS ON COTTON AND CERTAIN OTHER COMMODITIES
COMPARED WITH RATES TO NEW ORLEANS AND ST. LOUIS.**

Complainant filed an exhibit showing the rates on cotton and the distances to Memphis, New Orleans, and St. Louis from certain points in Louisiana on the St. Louis, Iron Mountain & Southern, the Chicago, Rock Island & Pacific, and the St. Louis Southwestern. The carriers sought to defend a lower basis of rates to New Orleans than to Memphis from some of the points named in the exhibit on the ground that the New Orleans rates are influenced by potential water competition on the Red, Black, and Ouachita rivers, the same explanation that was given for the wide disparity in rates from Memphis and New Orleans to the Shreveport group. Complainant also filed an exhibit setting forth the rates on window glass and petroleum products from Shreveport, La., to Memphis, New Orleans, and St. Louis. As to these rates no decision will for the present be rendered.

With regard to rates on cotton, it should be stated, however, that from points east of the Shreveport group and especially from points near the Mississippi River, there would seem to be no reason for maintaining higher rates for like distances to Memphis than are contemporaneously maintained in the reverse direction to New Orleans. This is obviously also true of points the rates from which are not influenced by water competition, and carriers will be expected to revise their rates accordingly. The present rates from points in Louisiana to Memphis are from 5 cents to 18 cents below the rates from the same points to St. Louis. The distances to Memphis are, on the average, about 250 miles less than to St. Louis. For so great a difference in distance a differential of 5 cents would appear to be too small. Carriers will be expected to revise their rates on cotton to Memphis and St. Louis from the points of origin herein involved so as to effect a difference in harmony with that prescribed in class rates in the reverse direction.

RATES TO SPECIFIC DESTINATIONS AND GROUPS.

Considering all the facts of record, we find that the present class rates via the direct routes from Memphis to southern Arkansas and Louisiana destinations here involved are unjust and unreasonable to the extent that they exceed, for like distances, those shown in the following table:

Distances (in miles.)	1	2	3	4	5	A	B	C	D	E
200.....	81	69	57	49	41	42	32	28	24	20
300.....	105	89	74	65	55	55	43	37	32	26
400.....	120	102	84	72	60	62	48	42	36	30
500.....	132	112	92	79	66	69	53	46	40	33

Carriers will be expected to graduate their rates for intermediate distances in harmony with the rates prescribed above.

One exception, however, should be made to a strict compliance with the mileage scale. From all directions Monroe, Shreveport, and Alexandria, La., have for a long time been grouped for rate-making purposes. This group the Commission declined to disturb in *Monroe Progressive League v. St. L., I. M. & S. Ry. Co.*, 15 I. C. C., 534, and the present record does not justify a disturbance of this relationship. Consequently in applying the mileage scale to points in the Shreveport group, the average distance of 298½ miles to Shreveport, Monroe, and Alexandria should control rather than the distance to each individual point. Upon this basis the rates to the Shreveport group should not exceed the following:

Classes.....	1	2	3	4	5	A	B	C	D	E
Rates.....	105	89	74	63	53	55	42	37	32	26

Points within the triangle of which Shreveport, Monroe, and Alexandria are the apices, and points on lines forming its sides should also be included in the Shreveport group and should take the same rates. The rates from New Orleans to points within the triangle are in some instances lower and in other instances higher than the rates from Memphis herein prescribed. While these rates are not directly involved in this proceeding, it is suggested that carriers revise the New Orleans rates to more closely correspond to rates for like distances in the mileage scale prescribed herein.

We further find that to points 276 to 300 miles, inclusive, from Memphis the class differentials Memphis under St. Louis should be on a 20-cent scale. To points more distant by direct lines this scale should be decreased and to points less distant increased 1 cent for each 15 miles. In fixing these differentials, the average distance to Shreveport, Monroe, and Alexandria should again control for all points within the triangle.

We also find that wherever traffic moves and combinations make lower than through rates the rates should be revised in the manner herein suggested.

The rates established herein should not be exceeded at intermediate points. Defendants will be expected to appropriately grade their intermediate rates.

DOCKET NO. 7250.

By complaint filed September 4, 1914, the Shreveport Chamber of Commerce and the Chamber of Commerce of Alexandria allege that class and commodity rates from Memphis, Tenn., St. Louis and Kansas City, Mo., points in defined territories, and from points in Atlantic seaboard territory, the Virginias and the Carolinas, to Shreve-

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port and Alexandria, La., are unjust, unreasonable, and unduly preferential in violation of sections 1, 3, and 4 of the act to regulate commerce. Commercial organizations of Texarkana, Nashville, Marshall, and Jefferson, Tex., and New Orleans, La., intervened, the latter on behalf of the carriers.

Defined territories embrace, roughly speaking, western trunk line territory, central freight association territory, Mississippi Valley territory, and southeastern territory. These territories are divided into a series of groups of origin from which to points in the southwestern states, Arkansas, Oklahoma, Louisiana, and Texas, rates are made by the application of stated differentials above or below the rates from St. Louis. The class differentials Memphis under St. Louis maintained in rates to Shreveport, Alexandria, and the entire southwest are upon a 10-cent scale. The present class rates to Shreveport and Alexandria from St. Louis and Memphis, respectively, are on a \$1.27 and \$1.17 scale. On April 1, 1914, certain increased rates were established from eastern seaboard territory to Shreveport and Alexandria via water-and-rail routes over the Gulf ports and from the Virginias and Carolinas all rail.

The rates from Memphis involved in this case are also in issue in No. 6390. In that case we prescribe a \$1.05 scale of class rates from Memphis to the Shreveport group, including Shreveport and Alexandria. The class differentials St. Louis over Memphis are now, as stated, on a 10-cent scale. In No. 6390 we prescribe a 20-cent scale. The rates here involved which are not in issue in No. 6390 are the rates from Kansas City and points in the defined territories, Atlantic seaboard territory, the Virginias, and the Carolinas.

The principal violations alleged of the fourth section involve departures from that clause of the section which prohibits the charging of through rates that exceed the aggregates of intermediate rates subject to the act. The through rates here involved exceed in many cases the aggregates of intermediates to and from New Orleans and other lower Mississippi River crossings which take the same rates as New Orleans. There are few, if any, such violations from St. Louis. There are some on traffic moving under commodity rates from Kansas City. There are numerous violations from Memphis and the defined territories. In some cases the joint water-and-rail rates via Gulf ports from the Atlantic seaboard territory exceed the aggregates of intermediate water-and-rail rates to New Orleans and other lower crossings, and to Morgan City and other interior Louisiana points, and rail rates beyond, filed with the Commission. On traffic from Memphis these violations of the fourth section are illustrated by the table on page 15 given in connection with our discussion of No. 6390.

The tables given below show the class rates from Memphis, St. Louis, and Kansas City, and points in the other territories in issue to the Shreveport group, the present differentials Memphis under St. Louis to the Shreveport group, and the rates from Memphis, St. Louis, and Kansas City to New Orleans.

TO SHREVEPORT GROUP.

(Governed by western classification.)

From—	1	2	3	4	5	A	B	C	D	E
	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
Memphis.....	117	101	88	75	60	62	50	42	36	29
St. Louis and Kansas City.....	127	111	96	82	65	69	55	47	41	34
Differentials Memphis under St. Louis..	10	10	8	7	5	7	5	5	5	5
New Orleans ¹	60	50	40	30	22	25	20	17	16	15
New York ²	127	111	96	82	69	72	59	50	47	39
Virginia cities.....	115	103	90	78	66	69	56	47	44	36
Carolina territory.....	147	127	108	92	72	78	63	54	47	39

¹ Apply also from Vicksburg, Baton Rouge, and other lower crossings.² Water and rail via New Orleans, Galveston, etc.

TO NEW ORLEANS.

(Governed by southern classification.)

From—	1	2	3	4	5	6	A	B	C	D	E	H	F
	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
St. Louis ¹	90	75	65	50	40	35	25	38	25	20	.....	.....	.....
Kansas City ¹	115	95	77	60	47	42	32	45	.....	.....	35	67	.....
Memphis ¹	65	50	45	35	30	25	16	26	15	12	.....	.....	.....

¹ Apply also to Vicksburg, Baton Rouge, and other lower crossings.

As a compliance with our findings and order establishing a relationship between the Texarkana and Shreveport rates on traffic from Memphis, St. Louis, Kansas City, and defined territories in *Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 569, the carriers in some cases brought about the readjustment by increasing the Shreveport rates instead of reducing the Texarkana rates. The class-rate changes thus made became effective April 1, 1914, and the commodity-rate changes April 1, 1915. These increased rates, the complainants assert, having been established since January 1, 1910, the defendants are required by the act to justify.

Upon all the facts of record, and following and adopting our findings in No. 6390 to the extent that they dispose of the issues involved in this case, we find that the class rates from Memphis to Shreveport and Alexandria are unreasonable to the extent that they exceed the rates named below. We further find that reasonable St. Louis differentials over Memphis would be those named below. The rates and differentials are stated in cents per 100 pounds and are governed by the western classification.

	1	2	3	4	5	A	B	C	D	E
Rates from Memphis.....	105	89	74	63	53	55	42	37	32	28
Differentials St. Louis over Memphis.....	26	17	14	12	10	11	8	7	6	5

We find that the rates from Kansas City to Shreveport and Alexandria should not exceed the rates which we here prescribe from St. Louis.

The rates from defined territories are attacked only with respect to the base rates from St. Louis to the destinations involved. The existing differentials in rates from defined territories over or below the St. Louis rates are not under attack.

The complaint against the increased rates resulting from the readjustment under the *Texarkana Case* is disposed of by our findings with respect to the rates from St. Louis.

We find no justification in any of the instances cited for the departures from the clause of the fourth section which prohibits the charging of through rates that exceed the aggregates of intermediate rates subject to the act. These departures have been disapproved in *Through Rates to Points in Louisiana and Texas, supra*.

We shall expect the defendants to revise their commodity rates in harmony with our findings with respect to the class rates. As in No. 6390, the record in this case does not justify disturbing the Shreveport group.

The water-and-rail rates from the Atlantic seaboard territory and the all-rail rates from the Virginia cities and the Carolinas, shown in the table, represent increases of 15 cents, 7 cents, 3 cents, and 2 cents, respectively, on the first four classes, which were made effective April 1, 1914. The complainants point out that these rates were established since January 1, 1910, and that the burden to justify their reasonableness is with the carriers. It appears that the rates from the Virginia cities and the Carolinas bear a fixed relationship to the rates from Atlantic seaboard territory. The increased class rates from the latter territory are the same as the rates on the first four classes from St. Louis. The rates on the other classes are lower from Atlantic seaboard territory than from St. Louis. Although the increased class rates from Atlantic seaboard territory became effective on the same date as the readjustment of class rates from St. Louis following our decision in the *Texarkana Case* became effective, there is no established relationship, the defendants state, between the two scales of rates. The water-and-rail rates from the Atlantic seaboard territory to Fort Worth are on a \$1.72 scale and the all-rail rates from St. Louis to the Texas common points are on a \$1.47 scale.

Upon all of the facts of record we conclude that the increased rates from these eastern territories on the first four classes have been justified. We further find that the rates on the other classes from these territories have not been shown to be unreasonable or otherwise unlawful.

Our action in following the findings in No. 6390 with respect to the rates from Memphis and St. Louis and violations of the fourth section is not without adequate support in the record in No. 7250. In this case the parties present the same general character of testimony and exhibits regarding the difficulty of assimilating or matching the classes of the southern and western classifications in constructing the combinations involved in the fourth section violations referred to, and regarding also the reasonableness and propriety, separately considered, of the through rates and intermediate rates involved in those adjustments, that they present in No. 6390. In some instances the rate comparisons are the same in the two cases.

The disposition of these cases has been delayed so as to permit their consideration in connection with a large number of other cases now pending which affect traffic in the same general territory as that herein involved. Since the issues presented are to a large extent interrelated and conclusions in some of the cases have a wide scope, the Commission even at this time is disinclined to issue specific orders until an opportunity has been had for further hearing and argument by any party feeling its interests prejudiced by the findings herein. These cases will therefore be held open and the orders be held in abeyance. Within 30 days from the service of this report interested parties may file exceptions to any part of our general findings relative to the scales of rates and differentials indicated, and may apply for further hearing or argument.

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No. 7312.
CITIES OF MARSHALL AND JEFFERSON, TEX.,
v.
TEXAS & PACIFIC RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos.
629 AND 677.

Submitted April 12, 1915. Decided May 9, 1916.

On complaint that the present class and commodity rates to Marshall and Jefferson, Tex., from points east and north thereof, are unreasonable and unjustly discriminatory in comparison with like rates to Texarkana, Ark-Tex., and Shreveport, La., *Held:*

1. The class rates from Memphis, Tenn., to Marshall and Jefferson are unreasonable and unjustly discriminatory in so far as they exceed rates based on the mileage scale prescribed in *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 224. Class rates from St. Louis should not exceed the rates from Memphis by more than the differentials therein named. The carriers will be expected to revise their commodity rates in harmony with the class rates and to accord to Marshall and Jefferson commodity rates as freely and to the same extent as to Texarkana and Shreveport.
2. Rates from New Orleans and from Atlantic seaboard territory via Gulf and rail to Marshall and Jefferson are unreasonable to the extent that they exceed the aggregates of the intermediate rates based on Shreveport.
3. Defendants' applications for authority to continue to charge lower rates to Texarkana and Shreveport on traffic passing through Marshall and Jefferson than is charged on like traffic to Marshall and Jefferson will be granted, provided rates to the intermediate points do not exceed those herein prescribed.
4. Reparation denied.

E. P. Gaines for complainants.

J. M. Souby for Kansas City Southern Railway Company, Texarkana & Fort Smith Railway Company, and defendants generally.

J. B. Payne for Texas & Pacific Railway Company and International & Great Northern Railway Company.

F. R. Dalzell for Gulf, Colorado & Santa Fe Railroad Company.

R. D. Coleman for St. Louis Southwestern Railway Company.

H. G. Herbel, F. G. Wright, and C. C. P. Rausch for St. Louis, Iron Mountain & Southern Railway Company.

George Thompson for defendants.

E. F. Hollies for Texarkana Freight Bureau, intervener.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are municipal corporations of the state of Texas. By complaint, filed September 22, 1914, they alleged that the class and commodity rates from points without the state of Texas, particularly New Orleans, La., St. Louis, Mo., Memphis, Tenn, and points in central freight association and seaboard territories, to Marshall and Jefferson, Tex., are unreasonable and unjustly discriminatory in comparison with rates on like traffic from the same points of origin to Texarkana, Ark.-Tex., and Shreveport, La. Departures from the long-and-short-haul rule of the fourth section also are alleged. Reparation is asked. The gravamen of the complaint is discrimination. The Texarkana Freight Bureau intervened, asking that Texarkana be given rates no higher than the rates that might be established to Marshall and Jefferson. Such portions of Fourth Section Applications Nos. 629 and 677 of F. A. Leland, agent, as seek authority to continue rates on classes and commodities from St. Louis and Memphis and points taking the same rates or rates made with relation thereto to Shreveport, and from New Orleans and points taking the same rates or rates made with relation thereto to Texarkana, which are lower than the rates contemporaneously applicable on like traffic to Marshall, Jefferson, and other intermediate points were heard with the complaint. All rates herein are stated in cents per 100 pounds.

Marshall is a city of 13,000 inhabitants; Jefferson, a town of 2,500. Both points are on the main line of the Texas & Pacific Railway extending southwest from Texarkana, over which traffic originating at Texarkana and points north thereof is transported to Texas destinations and to the west. Jefferson is 51 miles from Texarkana; Marshall, 67 miles. The main line of the Texas & Pacific Railway from New Orleans extends westward through Marshall and connects there with the line from Texarkana. Shreveport is 72 miles from Texarkana over the Texarkana, Shreveport & Natchez division of the Texas & Pacific, which extends from Texarkana through Shreveport to the main line from New Orleans at Lucas, La., a few miles south of Shreveport. The main line from New Orleans does not enter Shreveport. Marshall is 42 miles west of Shreveport, and the service between Shreveport and Marshall is performed partly over a short cut-off which connects Shreveport with the main line of the Texas & Pacific from New Orleans at Reisor, La., near Lucas. Traffic from New Orleans to Marshall, Jefferson, or Texarkana may move through Shreveport and Reisor. By way of the main lines through Jefferson, Marshall, and Reisor, Texarkana is 109 miles from Shreveport. It will be observed that

the lines of the Texas & Pacific form a triangle, with Texarkana at the apex, Marshall at the southwest corner, and Shreveport practically at the southeast corner. Jefferson is served by the Missouri, Kansas & Texas Railway of Texas, in addition to the Texas & Pacific, and is 47 miles from Shreveport via that line.

Both Marshall and Jefferson are on the extreme eastern boundary of Texas common-point territory and take the rates applicable thereto. Marshall is fairly representative of the rate situation involved, and for convenience the rates to Marshall will be discussed. Shreveport is in the Monroe-Shreveport-Alexandria group for rates from all directions. The rates from St. Louis to the southwest, which also determine the rates from defined territories, are fairly representative of the rates to the points involved through Texarkana. The rates from New York, N. Y., Gulf and rail, and from New Orleans are fairly representative of the rates to Marshall and Jefferson through Shreveport.

The following table illustrates the present class-rate adjustment from the points named to Marshall, in comparison with class rates to Texarkana and Shreveport:

	Miles.	1	2	3	4	5	A	B	C	D	E
From St. Louis to—		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Texarkana.....	490	127	111	96	82	65	66	55	47	41	34
Marshall.....	557	147	125	104	96	75	79	70	58	46	39
Shreveport.....	562	127	111	96	82	65	66	55	47	41	34
From New York (Gulf and rail) to—											
Shreveport.....		127	111	96	82	66	72	59	50	47	39
Marshall.....		172	145	120	109	84	91	80	67	55	49
Texarkana.....		139	121	105	90	75	78	64	54	51	43
From New Orleans to—											
Shreveport.....	325	60	50	40	30	22	25	20	17	16	15
Marshall.....	349	137	115	94	87	69	72	64	52	40	33
Texarkana.....	377	110	93	73	56	44	49	40	35	32	23

The present class rates from New Orleans to Marshall are materially higher than the aggregates of the intermediate class rates subject to the act, to and from Shreveport, as shown below:

	1	2	3	4	5	A	B	C	D	E
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
New Orleans to Shreveport...	60	50	40	30	22	25	20	17	16	15
Shreveport to Marshall.....	24	22	20	18	16	17	14	11	9	7
Total.....	84	72	60	48	38	42	34	28	25	22
Through rates.....	137	115	94	87	69	72	64	52	40	33
Difference.....	53	43	34	39	31	30	30	24	15	11

The 60-cent scale between New Orleans and Shreveport, which was originally established by boat lines, has been maintained by the railroads practically without change since 1881. The carriers have filed
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an application with the Railroad Commission of Louisiana for authority to increase the New Orleans rates and to apply an 80-cent scale. The interstate rates would also be increased to the 80-cent scale, but the present joint rates from New Orleans to Marshall would still exceed the aggregate of intermediate rates. The excess on first-class traffic would amount to 33 cents.

Commodity rates from St. Louis generally are the same to Texarkana and Shreveport, and the rates to Jefferson and Marshall in some instances are made by combination of the rates to and from Texarkana. But some of the through commodity rates exceed this combination. Representative carload rates from St. Louis and New Orleans to Texarkana, Marshall, and Shreveport are as follows:

Commodities.	From St. Louis to—			From New Orleans to—		
	Texarkana.	Marshall.	Shreveport.	Shreveport.	Marshall.	Texarkana.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Crackers.....	49	82	49	30	78	46
Coffee.....	53	70½	59	20	52	32
Candy.....	57	104	57	25	95	55
Cotton-factory products.....	75	132	75	30	121	65
Rope.....	55	82	45	20	75	50
Potatoes.....	39	58	39	17	44	30
Starch.....	45	62	45	22	56	41
Sugar.....	35	49	35	17	32	25
Wagons.....	69	79	70	25	72	61
Matches.....	70	77½	70	30	68½	63½

The commodity rates to Marshall and Jefferson from New Orleans and the Atlantic seaboard generally exceed the aggregates of the intermediate rates to and from Shreveport. The higher rates to Marshall and Jefferson are due in some instances to the publication of commodity rates to Texarkana and Shreveport and the maintenance of class rates only and of less liberal mixing privileges to Jefferson and Marshall.

Complainants point out that defendants have failed to publish as many commodity rates to Marshall and Jefferson as they publish to Texarkana and Shreveport, and urge that jobbers in Marshall and Jefferson thereby are placed at an undue disadvantage in competing with jobbers in the more favored localities. They state that they are directly intermediate to Shreveport on traffic moving south through Texarkana and to Texarkana on traffic moving north through Shreveport, and the record shows that a substantial portion of the traffic to Texarkana and Shreveport passes through Marshall and Jefferson. In December, 1914, 16,362 tons of freight moved between Shreveport and Texarkana, of which 6,482 tons, or approximately 40 per cent, moved through Marshall and Jefferson. Defendants reply that the route through Marshall and Jefferson is

used solely for convenience in operation and that they might amend their tariffs, if necessary, to restrict the application of their rates on the traffic involved to their Texarkana, Shreveport & Natchez division. Complainants compare their rates with the scale of rates prescribed in *Iowa State Board of R. R. Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 193; *ib.*, 563, and request the same scale of rates, plus the arbitraries fixed for two-line hauls. The Iowa scale, however, was prescribed to meet a particular situation, unlike that here presented, and can not upon this record be prescribed for the traffic now before us.

Defendants urge that the readjustment asked by complainants would affect disastrously a large portion of Texas common-point territory, which, as at present defined, is about 500 miles square and which has been considered in numerous cases. *Dallas Freight Bureau v. Mo., Kans. & Tex. Ry. Co.*, 12 I. C. C., 427; *Williams Co. v. V., S. & P. Ry. Co.*, 16 I. C. C., 482; *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463; *Texas Common Point Case*, 26 I. C. C., 528. In *Kaufman Commercial Club v. T. & N. O. R. R. Co.*, 31 I. C. C., 167, where it was argued that to grant relief to the complainant therein would disarrange long-established boundaries between different groups, we said, at page 171:

A just equality of opportunity for shipper and locality is required by the law. That discrimination had long existed without correction did not justify the discrimination, but furnished a reason why the law, which we are "required to execute and enforce," was passed.

Defendants also argue that a change in the rates from Memphis, St. Louis, and defined territories would disturb the entire territorial adjustment of rates. This argument also fails to answer complainants' demand for rates free from unlawful discrimination. A similar argument was made in *East Tennessee V. & G. Ry. Co. v. Interstate Commerce Com'n.*, 99 Fed., 52, 63, which the court answered as follows:

We are pressed with the argument that to reduce the rates to Chattanooga will upset the whole southern schedule of rates and create the greatest confusion; that for a decade Chattanooga has been grouped with towns to the south and west of her, shown in the diagram, and that her rates have been the key to the southern situation. The length of time which an abuse has continued does not justify it. It was because time had not corrected abuses of discrimination that the interstate commerce act was passed.

Upon all the facts disclosed we find that the present rates from the territories and points of origin involved herein to Marshall and Jefferson are unreasonable and unduly prejudicial to complainants in favor of Texarkana and Shreveport. In *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 224, we suggested reason-
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able maximum rates from Memphis to points in southern Arkansas and Louisiana and appropriate class differentials, St. Louis over Memphis. The rates from Memphis therein prescribed are as follows, rates for intermediate distances to be graduated in harmony with those stated:

Distance (in miles).	1	2	3	4	5	A	B	C	D	E
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
200.....	81	68	57	49	41	42	32	28	24	20
300.....	105	89	74	63	53	55	42	37	32	26
400.....	120	102	84	72	60	62	48	42	36	30
500.....	132	112	92	79	66	69	53	46	40	33

To points 276 to 300 miles from Memphis we found that class differentials, St. Louis over Memphis, should be on a 20-cent scale, and to points farther from Memphis the differential scale should be decreased 1 cent for each 15 miles. Texarkana is 290 miles from Memphis and Marshall is 67 miles farther. We are of the opinion and find that rates from Memphis to Marshall and Jefferson should not exceed rates based on this scale, and that rates from St. Louis to Marshall and Jefferson should not exceed the rates from Memphis by more than the differentials found reasonable in that proceeding. We further find that the rates to Marshall and Jefferson from New Orleans and from Atlantic seaboard territory via Gulf and rail are, and for the future will be, unreasonable to the extent that they exceed the aggregates of the intermediate rates based on Shreveport. The carriers will be expected to revise their commodity rates in harmony with the class rates and to accord to Marshall and Jefferson commodity rates as freely and to the same extent as to Shreveport and Texarkana.

Rates from points in defined territories are assailed only in so far as they are based on the rates from St. Louis or Memphis. The reductions in the base rates here required will affect correspondingly the rates from points in the territories in question.

The fact that the Texas & Pacific operates a line between Shreveport and Texarkana which does not touch Jefferson or Marshall, but which bears the greater part of the traffic between Shreveport and Texarkana and to which the rates may be restricted, is urged in support of the fourth section applications involved.

The distance from Memphis to Shreveport via Texarkana and the Texas & Pacific Railway through Jefferson and Marshall is 399 miles. The short-line distance is 321 miles. It is 434 miles from New Orleans to Texarkana via the Texas & Pacific Railway through Marshall and Jefferson. The short-line distance is 377 miles. In

both cases the line of the Texas & Pacific is circuitous. The applications of this line for authority to continue lower rates to Shreveport from Memphis, St. Louis, and points taking the same rates or rates made with relation thereto and to Texarkana from New Orleans and points taking the same rates or rates made with relation thereto than to intermediate points will be granted, provided that the rates to the intermediate points do not exceed the rates herein found reasonable. Rates from defined territories and other points east of the Mississippi River are based on or made with relation to the rates from Memphis and New Orleans. Similar relief will therefore be granted in respect to the rates from these points to Texarkana and Shreveport. The present record is insufficient to determine the question of reparation.

In *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, *supra*, orders were held in abeyance and the parties were given an opportunity for further hearing and argument. That procedure will be followed in the instant case and interested parties may, within 30 days from the service of this report, file exception to any part of the Commission's findings herein and apply for further hearing or argument.

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No. 7304.
CITY OF MEMPHIS ET AL.
v.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
ET AL.

Submitted May 8, 1915. Decided May 9, 1916.

Upon complaint by the Memphis Freight Bureau and certain merchants, manufacturers, and shippers at Memphis that, among other things, the interstate class and commodity rates between Memphis and Arkansas and Missouri points are unreasonable and unduly prejudicial to Memphis in favor of Arkansas points, St. Louis, and East St. Louis: *Held:*

1. The class and commodity rates between Memphis and Arkansas points, except as herein noted, are reasonable as a whole; the maintenance of class and commodity rates between points in Arkansas lower by more than a reasonable bridge toll across the Mississippi River than the interstate class and commodity rates between Memphis and Arkansas points for similar distances results in a relationship unduly prejudicial to Memphis; the existing discrimination must cease.
2. The class and commodity rates between Memphis and Missouri points have not been shown to be unduly prejudicial to Memphis when compared with the class and commodity rates between St. Louis and East St. Louis and Missouri points.
3. The class and commodity rates between Memphis and northeastern Arkansas points are reasonable as a whole; the present class and commodity rates between St. Louis and East St. Louis and northeastern Arkansas points are unduly prejudicial to Memphis. Defendant carriers given 60 days within which to submit for our approval nondiscriminatory rates.
4. The class and commodity rates between Memphis and southern Arkansas points, such as El Dorado, Crossett, and Camden, are unduly prejudicial to Memphis except in so far as these rates are made upon differentials under the rates from St. Louis and East St. Louis to the same points in accordance with the differential scale prescribed in *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 224.
5. The rates on cotton from Arkansas and Missouri points to Memphis are unduly prejudicial to Memphis in so far as they exceed rates made on a differential of 10 cents per 100 pounds under the rates to St. Louis and East St. Louis contemporaneously in effect.
6. The practices of the defendant carriers in granting certain concentration, compression, and reconsignment privileges at Arkansas points, St. Louis, and East St. Louis, while refusing such privileges at Memphis, are unduly prejudicial to Memphis, except as herein noted.
7. The practices of the defendant carriers of making free delivery of cotton to warehouse and compresses at Arkansas points and East St. Louis while refusing to make such free delivery at Memphis are not unduly prejudicial to Memphis.

8. The rates on rough rice from Arkansas stations to Memphis are unreasonable and unduly prejudicial to Memphis in favor of Arkansas points; reasonable rates prescribed for the future.
9. The bridge tolls of the Kansas City & Memphis Railway & Bridge Company between Memphis and Hopefield, Ark., have not been shown to be unreasonable.
10. Complaint that "sundry rules, regulations, and exceptions to classifications, etc., in effect over the lines of the defendant carriers" between stations in Arkansas and between stations in Missouri are unduly prejudicial to Memphis in favor of the Arkansas and Missouri points, dismissed.
11. Final order affirming the reasonableness of the present interstate class and commodity rates, except as herein noted, and requiring the discontinuance of the discrimination against interstate commerce, held in abeyance to permit within a period of 30 days from the service of this report applications for further hearing and argument by any interested party deeming itself prejudiced by the order forecast herein.

T. K. Riddick, Charles M. Bryan, and Leo Goodman for complainants.

Thomas Bond, S. H. West, E. A. Haid, W. F. Dickinson, Wallace T. Hughes, Henry G. Herbel, and Fred G. Wright for defendants.

Joseph M. Hill, Henry L. Fitzhugh, John Brizzolara, and M. W. Martin for Arkansas interveners.

T. K. Riddick for Memphis interveners.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The complaint in this proceeding, filed September 17, 1914, was brought by the city of Memphis, Tenn., the Memphis Freight Bureau, and approximately 125 merchants, manufacturers, and jobbers located at Memphis, who are engaged in shipping freight between Memphis and points in Arkansas and Missouri. The Memphis Merchants Exchange, with some additional Memphis shippers, intervened on behalf of complainants. At the hearing a number of shippers located at different points within the state of Arkansas, together with certain shippers' associations and traffic bureaus, also intervened on their own behalf.

Memphis is on the east bank of the Mississippi River. Freight moving between Memphis and Arkansas and Missouri points must cross that river. The Kansas City & Memphis Railway & Bridge Company, hereinafter called the bridge company, originally constructed and now owns the single bridge between Memphis and Hopefield, Ark. The stock of the bridge company, however, is owned entirely by the St. Louis & San Francisco Railroad, hereinafter called the Frisco. A plan is on foot for the construction of a second bridge across the Mississippi, to be owned jointly by the Chicago, Rock Island & Pacific Railway Company, hereinafter called the Rock Island; the St. Louis, Iron Mountain & Southern Railway Company, hereinafter called the

Iron Mountain; and the St. Louis Southwestern Railway Company, hereinafter called the Cotton Belt.

Of the four carriers defendant herein, the Cotton Belt does not reach Memphis directly, but between Fair Oaks, Ark., 60 miles west of Memphis, and Memphis it pays the Iron Mountain 3 cents per 100 pounds for hauling its Memphis traffic. The lines of the Rock Island and Iron Mountain end at the western terminus of the bridge, but these defendants operate their own equipment across the bridge into Memphis. The four carriers defendant herein together serve practically the entire state of Arkansas and southern Missouri. The Rock Island extends due west from Bridge Junction, Ark., through Little Rock to Howe, Okla., its junction with the Kansas City Southern. There is also a branch of the Rock Island extending from Little Rock into southern Louisiana. The Iron Mountain runs in a southwesterly direction from St. Louis, Mo., and Thebes, Ill., through Little Rock and the central part of Arkansas to Texarkana, Ark. Its system also reaches the territory adjacent to the west bank of the Mississippi, while another line runs from Argenta, Ark., along the north bank of the Arkansas River through Van Buren, Ark., north to Kansas City. Still another line runs from Diaz, a point on the main line in northern Arkansas, through Yellville, Ark., and Carthage, Mo., to Pittsburg, Kans. The Cotton Belt extends southwesterly from East St. Louis, Ill., and Thebes, through the eastern and southern part of Arkansas to Texarkana, while the Frisco reaches northeastern Arkansas and southern Missouri by its lines from Springfield, Mo., to Memphis and Cape Girardeau, Mo., respectively, and its line running north from Memphis on the west bank of the Mississippi to Chaffee, Mo.

The map printed herewith indicates the location of the lines in question; it serves also to indicate certain points for the carriage between which rate reference is made hereafter, particularly in the appendix.

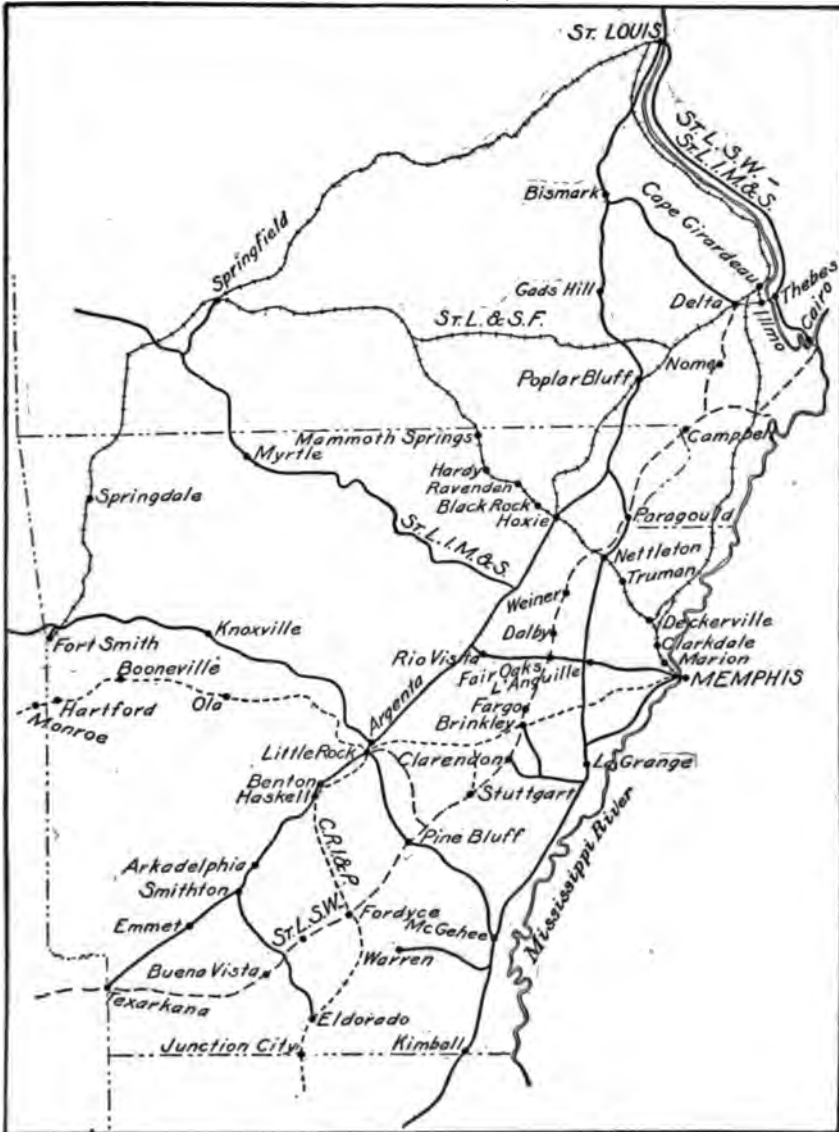
The complainants allege generally that the present freight rates of the defendant carriers—

in nearly all the classes and upon nearly all the commodities between Memphis and various cities and towns in Arkansas and Missouri * * * are both unreasonably high in themselves and are also unjustly discriminatory against the city of Memphis—

in favor of Arkansas points, St. Louis, and East St. Louis, in violation of sections 1 and 3 of the act. The specific grounds of complaint may be divided into, first, an attack upon the rate structure of the defendant carriers between Memphis and Arkansas and Missouri points, and, second, certain minor charges against particular rates and particular practices in effect on defendants' lines.

1. It is alleged that the predecessor in title of the Rock Island contracted with the city of Memphis to give Memphis the same rate

structure in and out of Arkansas as had Hopefield, Ark., a point just across the river; that this contract the Rock Island has failed to observe; and that in so far as the class and commodity rates between



Memphis and Arkansas points are higher than those between Hopefield, Ark., and Arkansas points, they are unreasonable and unjustly discriminatory. Whatever the effect of this contract originally, it
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is no longer determinative of the reasonableness of the present rate structure. And although the above allegation of the complaint merely puts in issue the rates between Memphis and Arkansas points when compared with the rates between Hopefield and Arkansas points, we consider that the entire rate adjustment of the Rock Island between Memphis and Arkansas points, both *per se* and as related to the Arkansas state rates, is sufficiently presented for our determination. The general allegations of the petition include the Rock Island adjustment, and at the hearing all parties considered that adjustment in issue to the same extent as the rate adjustments of the Cotton Belt, the Iron Mountain, and the Frisco.

It is alleged that "most of the class and commodity rates" of the Cotton Belt, the Iron Mountain, and the Frisco between Memphis and Arkansas and Missouri points are unreasonably high and unduly prejudicial to Memphis in favor of Arkansas points, St. Louis, and East St. Louis. Exhibits accompanying the complaint show that while the interstate class rates from Memphis are in the great majority of instances higher than the Arkansas and Missouri state rates for similar distances, there are certain occasional exceptions falling within classes 2 through D, generally speaking, and within distances from about 100 to 200 miles; and that while practically all less-than-carload interstate rates are higher for similar distances, there are particular carload rates from Memphis into Arkansas and Missouri, including certain rates on corn meal; canned goods; iron, bar or band; iron, wire nails; and sugar and molasses; which are as low as, or lower than, the rates for equal distances prescribed in the intrastate scales.

It is alleged that in general the class and commodity rates of the Iron Mountain, the Rock Island, the Frisco, and the Cotton Belt from St. Louis and East St. Louis are materially lower to Missouri and Arkansas points than rates made by the same carriers from Memphis to Missouri and Arkansas points for corresponding distances. At the hearing complainants especially called our attention to the interstate rates from St. Louis and East St. Louis to southern Arkansas points, such as Camden, Crossett, and El Dorado, when compared with the interstate rates from Memphis to those points, alleging that the rates from St. Louis to those points should exceed the rates from Memphis by the same differential as the present rates from St. Louis and East St. Louis to such points as Little Rock and Pine Bluff exceed the present rates from Memphis to Little Rock and Pine Bluff.

In so far, therefore, as the general rate structure under attack is concerned, we are of opinion that the allegations in the complaint are sufficient to put in issue (1) the interstate class and commodity rates

between Memphis and points in Arkansas on the lines of the defendant carriers, both in themselves and as related to the class and commodity rates intrastate in Arkansas; (2) the interstate class and commodity rates between Memphis and points in Missouri on the lines of the defendant carriers, both in themselves and as related to the class and commodity rates between St. Louis and East St. Louis and Missouri points; (3) the interstate class and commodity rates between Memphis and northeastern Arkansas points both in themselves and as related to the interstate class and commodity rates between St. Louis and East St. Louis and the same Arkansas points; and (4) the interstate class and commodity rates between Memphis and southern Arkansas points, such as El Dorado, Crossett, and Camden, both in themselves and as related to the interstate class and commodity rates between St. Louis and East St. Louis and the same southern Arkansas points.

2. The complaint also contains certain specific charges against particular rates and particular practices in effect on defendants' lines. It is alleged that the rates on cotton of the Cotton Belt, the Iron Mountain, and the Frisco from Arkansas and Missouri points to concentration points in Arkansas and to St. Louis and East St. Louis are unduly prejudicial to Memphis; that the Iron Mountain and the Cotton Belt unduly prefer Arkansas points by granting to shippers of cotton at such points certain concentration and reconsignment privileges which are denied at Memphis; and that the Iron Mountain, the Cotton Belt, and the Frisco unduly prefer Arkansas points and East St. Louis by making free delivery of cotton to warehouses and compresses at those points, while refusing to make such free delivery at Memphis.

It is further alleged that the rates on rough rice from Arkansas stations to Memphis are unreasonable and unduly prejudicial to Memphis in favor of Arkansas points; that the present bridge tolls between Memphis and Arkansas are unreasonably high when compared with other bridge tolls; and that "sundry rules, regulations, and exceptions to classifications, etc., in effect over the lines of the defendant carriers" between stations in Arkansas and between stations in Missouri are unduly prejudicial to Memphis in favor of the Arkansas and Missouri points.

Of the various issues involved in this case complainants have laid most stress upon the alleged discriminatory nature of the relationship between the interstate rates, both class and commodity, between Memphis and Arkansas points and the state rates within Arkansas. The interstate rates are also attacked as unreasonable *per se*, but complainants offered practically no evidence upon this issue, their entire effort being directed toward establishing the fact that the pres-

ent relationship of state and interstate rates is unduly prejudicial to Memphis and results in an undue burden upon interstate commerce.

The Arkansas interveners base their entire case upon the theory that the inbound rates to Memphis from points east and north, when added to the outbound rates from Memphis to Arkansas points, should not exceed the rates from the same points of origin to Arkansas jobbing points when added to the Arkansas state rates from those jobbing points to points of consumption. The interstate rates into Memphis, however, are not under attack, nor have interveners shown that the location of interior Arkansas points when compared with Memphis is such that the sum total of the in and out rates, respectively, should be the same. We have under consideration in this phase of the case only the relation of the interstate rates between Memphis and Arkansas points with the rates within Arkansas. *Railroad Commission of Louisiana v. St. L. S. W. Ry. Co.*, 23 I. C. C., 31, commonly known as the *Shreveport Case*.

It is asserted by defendants and not challenged by complainants or interveners that the interstate rates involved have not been increased since 1910. On the contrary, on many commodities they have been decreased, it is said, in an endeavor to protect interstate shippers. Defendants were not content, however, to rest on complainants' failure to sustain the burden of proving the interstate rates unreasonable, but have introduced a large number of exhibits to show affirmatively the reasonableness of their present interstate rates. These exhibits include comparisons of class and commodity rates from Memphis into Arkansas and Missouri for varying distances with similar rates in or between other states in the same general territory. The comparisons include rates for comparable distances from Thebes and Cairo to destinations in Arkansas; from points in Missouri to points in Arkansas included in the same agency tariff which carries the rates herein under attack; between Arkansas points and Oklahoma points; between Louisiana points and Arkansas points; from Oklahoma points to Texas points; from Memphis to points on the Yazoo & Mississippi Valley Railroad and Illinois Central Railroad in Mississippi; and from St. Louis to Arkansas destinations. Several of the rate bases cited for comparative purposes have been approved by this Commission. A selection of certain of these rates has been made from the exhibits submitted by the defendants with the object of comparing the rates for different distances along the respective lines of defendant carriers, sufficient points being taken to give a representative selection. The tables are printed in the appendix.

An examination of these tables, together with a careful study of the record and the voluminous exhibits introduced by the carriers, shows conclusively that the present relationship between the state

class and commodity rates within Arkansas and the class and commodity rates between Memphis and Arkansas points is unduly prejudicial to Memphis and constitutes a burden on interstate commerce, in that for equal distances the state rates are materially lower than the interstate rates. It is undisputed that complainants at Memphis are actively competing with the shippers located at Arkansas points, and that in many instances the Memphis dealer has been driven from the Arkansas markets by the competition of the merchants and shippers of that state. The Memphis shippers being excluded from Arkansas on account of these state-made rates, Arkansas shippers and merchants are unduly preferred, while the Arkansas consumer is cut off from the competing Memphis market.

The discrimination shown by a comparison of the class rates is true even to a greater degree of the commodity rates. While the exhibits show representative rates, there are many discrepancies between the interstate and the state rates which are far more prejudicial to the interstate shipper than the exhibits indicate. For example, Brinkley, Ark., is 69 miles from Memphis and 64 miles from Little Rock. From Memphis to Brinkley the rate on mattresses is 42 cents per 100 pounds; from Little Rock the rate is 20 cents. The rate on sugar, rice, nails, wire, molasses, and lard compound from Little Rock to Earle, Ark., 122 miles, is 17 cents; from Memphis to Beebe, Ark., 115 miles, it is 36 cents; the rate on salt from Little Rock to Earle is 36 cents per barrel, while from Memphis to Beebe it is 69 cents per barrel; the rate on evaporated fruits, potatoes, and beans from Little Rock to Earle is 24 cents, and from Memphis to Beebe 40 to 45 cents; the rate on corn meal from Little Rock to Earle is 22 cents, and from Memphis to Beebe 36 cents; the rate on canned goods from Little Rock to Earle is 19 cents, and from Memphis to Beebe 36 cents; the rate on bagging and ties from Little Rock to Earle is 15 cents, and from Memphis to Beebe 36 cents.

The history of the state rates in Arkansas shows that in April, 1900, the Railroad Commission of Arkansas prescribed a distance scale of rates between points within the state which were for the most part materially lower than those previously in effect. These rates, however, do not appear to have been any lower than certain special rates called "jobbers" and "billing" rates theretofore voluntarily maintained by the carriers in Arkansas. In 1903 and 1904 other distance tariffs were prescribed by the Arkansas commission, the principal effect of which was to transfer from the classified list many commodities which thereafter moved on commodity rates lower than the former class rates. In June, 1908, Standard Distance Tariff No. 3 was promulgated by the Arkansas commission. In July, 1908, the tariff

was enjoined by the circuit court of the United States for the eastern district of Arkansas upon complaint by the carriers. Pending an appeal to the Supreme Court of the United States and under permission from the district court to increase their rates 33½ per cent the carriers on June 1, 1909, made effective the so-called "court" tariff prescribing rates higher than those authorized by Standard Distance Tariff No. 3 by from 22 to 24 per cent. The Supreme Court of the United States in June, 1913, reversed the district court and dissolved the injunction, but without prejudice. *Allen v. St. Louis Southwestern Ry. Co.*, 230 U. S., 553. Thereupon Standard Distance Tariff No. 3 again went into effect. That tariff was still effective when the present case was heard in December, 1914, and February, 1915.

After the Supreme Court's decision in the *Allen Case*, *supra*, the various carriers interested in the rates prescribed by the state commissions of Oklahoma, Arkansas, and Missouri, among which are the defendants, formed a committee of statisticians and traffic officers to determine a method of better presenting testimony to show the effects of the state-made rates upon their revenues. This committee, as a result of its labors, devised the so-called Oklahoma formula for allocating state and interstate expenses. In *Boyle v. St. L. & S. F. R. R. Co.*, 222 Fed., 539, this formula was substantially approved by the district court for the eastern district of Arkansas, and as a result the court enjoined the application of Standard Distance Tariff No. 3 on the Frisco lines, that carrier being the sole petitioner. The court said:

The court finds that the rates enjoined yield no profit on the intrastate business, but on the contrary show a loss.

Following the *Boyle Case* the Frisco increased its rates intrastate. Bills in equity have been filed by the other defendants herein asking the same relief as that granted the Frisco. The *Boyle Case* is now before the Supreme Court of the United States on appeal.

From the time the Railroad Commission of Arkansas first prescribed rates, rules, and regulations for intrastate traffic defendants have protested and contested the reasonableness thereof. Standard Distance Tariff No. 3 has been continuously under attack by the defendant carriers, and even interveners admit that it required revision. This revision has been completed since the hearing, and is embodied in the so-called Standard Distance Tariff No. 5, which has been made a part of this record. From an examination of the new tariff it appears that the same general structure of rates is continued, but that certain rates for distances over 125 miles are reduced although the Arkansas interveners admitted that the rates in Standard Distance Tariff No. 3 for such distances were "unduly low." It thus appears that Standard Distance Tariff No. 5 will give the carriers operating in Arkansas no substantial relief.

The present unduly low rates within Arkansas are due at least in part to the attempt by the Railroad Commission of Arkansas to protect Arkansas shippers and build up Arkansas jobbing centers. Certain of its annual reports are cited in the record as follows:

From the 1902 report:

At all points where the commission's tariffs have come in competition with rates from interstate points they have had the effect of breaking down the interstate rates.

From the 1904 report:

The effect of the commission's standard distance tariff has been to force a reduction of interstate rates to local points in Arkansas to about 60 or 70 per cent of the scale formerly in effect.

From the 1905 report:

We have examined the schedules of rates of other states and find that the (Arkansas) rates are lower than in most states.

An examination of the present rates from Memphis and St. Louis to points in our state as compared with rates in effect in 1900 when the commission's tariff was put in will show that the interstate rates have not only been reduced from 25 to 40 per cent but that commodity grouping in the interstate tariff has been changed to correspond with that tariff, so that the commission has not only succeeded in eliminating the discrimination and reducing the freight on Arkansas local traffic, but has been instrumental in reducing the tax for freight on all Arkansas commerce, state and interstate.

In view of all the facts of record we are of opinion and find that the maintenance of class and commodity rates between points in Arkansas lower by more than a reasonable bridge toll across the Mississippi River than the interstate class and commodity rates for similar distances between Memphis and Arkansas points contemporaneously in effect results in a relationship between state and interstate rates which is unduly prejudicial to Memphis and constitutes a burden upon interstate commerce. This discrimination the carriers will be required to remove. *Houston East & West Texas R. R. Co. v. U. S.*, 234 U. S., 342.

We are further of opinion and find that the present interstate class and commodity rates between Memphis and Arkansas points, with the few exceptions hereafter noted, are reasonable as a whole.

An analysis of the tables in the appendix shows a general similarity in the level of the interstate class rates compared. We realize, however, that certain of the scales shown are distance scales, and that in some instances at least the rates actually in effect are less than the distance rates. The Arkansas state scale is noticeably lower than the others. In a few sporadic cases the rates of the state scale are higher. The other scales run sometimes higher and sometimes lower than the class rates under attack. Often where a considerable spread exists between the first-class rate in the scale under attack and the first-class rate in the comparative scales, this spread decreases as the lower classes are reached and in many instances disappears entirely, or

a negative spread appears. The greatest disparity exists between the first two classes of the Texas-Oklahoma scale and the first two classes in the scales herein assailed, the rates being materially lower for like distances in the Texas-Oklahoma scale than the rates here under consideration. This disparity, however, rapidly diminishes so that the third and fourth classes are substantially comparable, while the lower classes are generally on a higher level in the Texas-Oklahoma scale than the rates between Memphis and Arkansas points. The spread between the first two classes in the two sets of rates under comparison also lessens with the distance. On the whole, the rates between Memphis and Arkansas are no higher than the rates in this same general territory.

It is argued that the rates west from Memphis and those from Memphis to Mississippi points are under different classifications, and therefore not strictly comparable except as to the first class. This objection, however, is not fatal to the value of the comparisons made, for the comparisons show in a general way the similarity of the class rates.

Defendants show that the cost of maintenance west of the Mississippi River is exceptionally high, for transportation conditions within Arkansas are less favorable and the cost of service greater than in any other state through which they run. For example, the cost of material and labor for maintenance of way on the Rock Island in Oklahoma for the fiscal year 1914 was \$811.34 per mile of road, while in Arkansas its cost was \$1,487.50 per mile of road. The rainfall and consequent flood damage in Arkansas exceeds that in other states, while the flood conditions along the west bank of the Mississippi River each spring are costly to a degree.

When we consider that on the hauls between Memphis and Arkansas points a bridge service is included which is computed by the defendants to be equivalent to 100 to 200 miles of track, at a valuation of \$60,000 to \$30,000 per mile, we consider that the rate comparisons introduced by the defendants amply support a finding that the class rates between Memphis and Arkansas points covered by the complainants' petition, except as otherwise noted herein, are just and reasonable in and of themselves.

In *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 224, we found that the class rates via the direct routes from Memphis to southern Arkansas and Louisiana destinations were unjust and unreasonable to the extent that they exceeded for like distances those shown in the following table:

Miles.	1	2	3	4	5	A	B	C	D	E
200.....	81	69	57	49	41	42	32	28	24	20
300.....	105	89	74	63	53	55	42	37	32	26
400.....	120	102	84	72	60	62	48	42	36	30

We are of opinion and find, therefore, that while the present class rates of the defendant carriers between Memphis and Arkansas points are reasonable as a whole, the class rates from Memphis to southern Arkansas points are unjust and unreasonable to the extent that they conflict with the rate adjustment prescribed in the *Memphis Freight Bureau Case, supra*.

From a further analysis of the above tables and exhibits submitted by the Rock Island and the Frisco, we consider that the present commodity rates between Memphis and Arkansas points are also reasonable as a whole. The Rock Island introduced an exhibit showing various commodity rates from Memphis to Eden, Ark., a distance of 74.3 miles, and commodity rates on the same articles from Shreveport to Texarkana, a distance of 73 miles. The Rock Island's commodity rates compare favorably with the rates from Texarkana to Shreveport and are, in most instances, less than those rates. The Rock Island also made a comparison of its rates on cotton seed from Arkansas points to Memphis with rates for similar distances between points in Texas, between Arkansas and Oklahoma, between Arkansas and Louisiana, and between points in Louisiana. In practically all instances the Memphis rates are lower. The Rock Island introduced the following table as an exhibit. It compares commodity rates on certain articles from Memphis to Forrest City, Ark., with rates from Memphis to Como, Miss., on the Illinois Central, and to Forty-five, Tenn., on the Southern:

From Memphis to—	Canned goods, L. C. L.	Wire and nails, L. C. L.	Petroleum oil, L. C. L.	Salt, L. C. L.	Sugar and molasses, L. C. L.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Forrest City, 44.8 miles.....	21.0	23.0	17.0	12.0	19.0
Como, Miss., 44 miles.....	27.0	36.0	27.0	16.5	20.0
Forty-five, Tenn., 45.5 miles.....	29.0	33.0	29.0	17.0	19.0

The Frisco also introduced extensive exhibits, comparing various interstate commodity rates, including rates on bagging and ties; empty barrels, new; beer; canned goods; cement; coal and coke; grain and grain products; cotton seed; cottonseed meal and hulls; emigrants' outfits; excelsior; fertilizer; furniture; ice; iron and steel; hay and straw; lime; live stock; petroleum oil; mattresses and bed springs; packing-house products; pottery; salt; sugar and molasses; farm wagons; and wheelbarrows; with rates both state and interstate applicable in contiguous territory. These comparisons all go to show the reasonableness of the present interstate commodity rates between Memphis and Arkansas points on the Frisco. Little evidence, however, was introduced by the Iron Mountain or the Cotton Belt to show the reasonableness of the commodity rates between Memphis

and Arkansas points on their lines. In *Memphis Freight Bureau v. St. L. S. W. Ry. Co.*, 20 I. C. C., 33; 22 I. C. C., 537, however, we prescribed reasonable rates on cotton seed from points on the Cotton Belt in Arkansas and Missouri to Memphis. These rates are still in effect.

It is asserted by defendants and not challenged by complainants or interveners that the commodity rates between Memphis and Arkansas have not been increased since 1910. They must be considered reasonable therefore until shown unreasonable. This burden of proof complainants have not sustained. On the contrary, two of the defendants, the Rock Island and the Frisco, have offered material evidence of the reasonableness of their present commodity rates between Memphis and Arkansas. Although particular rates are not sufficiently covered by the record to warrant specific findings in each and every particular case, we are of opinion and find that since practically no evidence has been introduced to show the present commodity rates between Memphis and Arkansas points unreasonable, and since two of the carriers operating within that territory have affirmatively established the reasonableness of their commodity rates, the present adjustment in commodity rates between Memphis and Arkansas points over the lines of the four defendant carriers, competing as they do with each other, is reasonable as a whole.

There may be specific instances where certain irregularities occur, and if such is the case and complainants consider that any particular interstate rate is unreasonable in itself or unduly discriminates against a certain point or a certain commodity, they may call it to our attention in this or in a further proceeding. The absence of evidence permitting the fixation of just and reasonable rates in all instances is due to the necessarily inadequate record and is remediable by proceedings of sufficient particularity.

Complainants further allege that in general the class and commodity rates between Memphis and points in southern and eastern Missouri on the Iron Mountain, the Frisco, and the Cotton Belt are unreasonable in themselves and unduly discriminate against Memphis when compared with the class and commodity rates between St. Louis and East St. Louis and Missouri points. Defendants introduced exhibits, some of which are incorporated in the tables in the appendix, which show that the present class and commodity rates between Memphis and Missouri points are reasonable as a whole. We are not convinced, however, that the class and commodity rates between St. Louis and East St. Louis and the Missouri points are unduly prejudicial to Memphis. The distances from Memphis and St. Louis, respectively, to points in southern Missouri do not differ greatly. For instance, to Poplar Bluff, Mo., from Memphis it is 110 miles, and from St.

Louis 170 miles. The rates from St. Louis and East St. Louis to southern and southeastern Missouri are depressed by water competition on the Mississippi River. In view of this situation we do not consider that complainants have shown an undue degree of discrimination against Memphis in the present St. Louis and East St. Louis rates to Missouri points, although they are admittedly lower for equal distances.

Complainants further allege that the present interstate class and commodity rates between St. Louis and East St. Louis and northeastern Arkansas points are unduly prejudicial to Memphis when compared with the interstate class and commodity rates between Memphis and the same Arkansas points. The comparisons which the defendant carriers submit bear out their contention that the class and commodity rates between Memphis and northeastern Arkansas points are reasonable as a whole. From an examination of the exhibits it is also apparent that Memphis shippers are prejudiced unduly by the relationship between the St. Louis and East St. Louis rates and the Memphis rates. The mileage to points in northern Arkansas from Memphis is much less than that from St. Louis and East St. Louis. For instance, the distance to Hoxie from Memphis is 50 miles, from St. Louis 230 miles, to Knobel from Memphis 78 miles, from St. Louis 202 miles. We are of opinion, therefore, and find, that the present interstate class and commodity rates between Memphis and northern Arkansas points, such as Black Rock, Knobel, and Paragould, are reasonable as a whole. In view of the greater distances from St. Louis and East St. Louis to these points we are of opinion that the St. Louis and East St. Louis rates are unduly prejudicial to Memphis. This discrimination the carriers will be required to remove. The carriers will be expected to submit within 60 days for our approval a revision of these rates in order to remove the discrimination here found.

Complainants attack the present rates from St. Louis and East St. Louis to southern Arkansas points, such as El Dorado, Camden, and Crossett, when compared with the rates from Memphis to these points. Complainants show that the present interstate rates from St. Louis and East St. Louis to such points as Little Rock and Pine Bluff are based upon certain differentials, beginning with 30 cents first class, over the interstate rates from Memphis to those points. Complainants contend that in so far as the St. Louis and East St. Louis rates to southern Arkansas points, such as El Dorado, Camden, and Crossett, are based upon differentials less than the St. Louis differential over Memphis to Little Rock and Pine Bluff, they are unduly prejudicial to Memphis.

In *Memphis Freight Bureau v. St. L., I. M. & S. R. R. Co.*, 39 I. C. C., 224, we required the carriers to maintain on traffic from Memphis I. C. C.

phis to points in southern Arkansas class rates which to points 276 to 300 miles from Memphis do not exceed rates on a 20-cent differential scale below the class rates contemporaneously maintained from St. Louis to the same destination; to points more distant by a differential scale decreased 1 cent for each 15 miles; and to points less distant by a differential scale increased 1 cent for each 15 miles. The application of this differential scale in this case results in a differential, first class, of 21 cents to Crossett, a distance of 271 miles from Memphis, and a differential, first class, of 30 cents to Little Rock, a distance of 133 miles from Memphis. This relationship seems to be reasonable.

We are of opinion that hereafter rates from Memphis to southern Arkansas points should be made upon differentials under the rates from St. Louis to the same Arkansas points as prescribed in the above differential scale. The differentials on the other classes should be determined on the basis of the percentage which that class bears to the first-class rate. In determining the commodity rates the differential should be the same percentage of the differential in the rate on the class to which the commodity belongs as the percentage the commodity rate is of the class rate.

In addition to an attack upon the general rate structure of the defendant carriers operating within this territory, the complaint contains certain minor charges against particular rates and particular practices in effect on the defendants' lines. It is alleged that the rates of the Cotton Belt, the Iron Mountain, and the Frisco on cotton from Arkansas and Missouri points to concentration points in Arkansas and to St. Louis and East St. Louis are unduly prejudicial to Memphis. The present rates of the defendant carriers from points in Arkansas and Missouri to Memphis, St. Louis, and East St. Louis, are shown in the following table:

Main-line stations.	Memphis.		St. Louis-East St. Louis.	
	Miles.	Rate.	Miles.	Rate.
Memphis district:				
Hergot, Ark.....	55	30	290	35
Nettleton, Ark.....	60	30	286	35
Jonesboro, Ark.....	64	30	282	35
Bono, Ark.....	72	30	274	35
Cash, Ark.....	83	30	285	35
Pitts, Ark.....	93	30	295	35
Estico, Ark.....	99	30	301	35
Sedgwick, Ark.....	78	30	268	35
Hoxie, Ark.....	85	30	280	35
Black Rock, Ark.....	94	30	268	35
Imboden, Ark.....	103	30	277	35
Williford, Ark.....	116	30	290	35
Hardy, Ark.....	126	30	300	35
Pickinger, Ark.....	134	30	308	35
Mammoth Springs, Ark.....	142	30	316	35
St. Elmo, Mo.....	152	30	326	35
Chapin, Mo.....	164	30	326	35
West Plains, Mo.....	170	30	320	35
Pomona, Mo.....	181	35	309	40
Willow Springs, Mo.....	191	35	299	40

From this table it appears that the cotton rates to St. Louis and East St. Louis and to Memphis are extensively blanketed; that in most instances the rates to St. Louis and East St. Louis are 35 cents and the rates to Memphis 30 cents. This results in a differential of 5 cents, although the distances to St. Louis and East St. Louis average approximately twice the distance to Memphis. In *In the Matter of Freight Rates*, 11 I. C. C., 180, the cotton rates of the Cotton Belt from Arkansas points to Memphis and St. Louis were under consideration. Attention was called to the lack of uniform differentials between these rates. In the report we said:

Without the showing of some controlling condition it seems that there should be a uniform difference.

The rates to St. Louis and East St. Louis were voluntarily made, and from this and other pertinent facts of record we find that the present Memphis rates are unduly prejudicial to Memphis in so far as they exceed rates made on a differential of 10 cents per 100 pounds under the rates to St. Louis and East St. Louis contemporaneously in effect. Under the present rate adjustment to St. Louis and East St. Louis this would result in the Memphis rates being in most instances 25 cents per 100 pounds.

Complainants object to the fact that whereas uncompressed cotton may be shipped to certain Arkansas points, St. Louis, and East St. Louis, there concentrated, compressed, and reconsigned at the remainder of the through rate from the point of origin to the point of destination, such a practice is not accorded at Memphis on Arkansas cotton. The Frisco, however, permits concentration, compression, and reconsignment in transit, whether at Memphis or points in Arkansas, if the outbound movement is over its line. The other defendants also accord transit on cotton when they get part of the outbound haul. There are in effect, however, through rates on cotton via Memphis from Arkansas points to eastern destinations in southern and official classification territories. In fact, from southern Arkansas points to such eastern spinning points as Boston the route via Memphis is 100 miles less than that via St. Louis. We are of opinion and find, therefore, that the defendants' present concentration, compression, and reconsignment practices are unduly prejudicial to Memphis in so far as defendants withhold the privilege of concentration, compression, and reconsignment at Memphis on cotton moving from Arkansas points to Memphis destined for points beyond in southern and official classification territories where through routes and joint rates are in effect via Memphis from points of origin to destinations in those territories, while similar practices are in effect at St. Louis and East St. Louis. Where, however, the move-

ment into Memphis for concentration, compression, and reconsignment would entail a back haul requiring the use of two cars inbound for one outbound, thus resulting in an uneconomical use of equipment, we consider that the carriers are justified in refusing to accord Memphis shippers such concentration, compression, and reconsignment services on the through rate from point of origin to point of destination.

The complainants allege that free delivery of cotton is made at Arkansas points and East St. Louis, but not at Memphis, and that this practice unduly prejudices Memphis. The defendant carriers' tariffs provide for free delivery when made to compresses located on the defendants' own rails, otherwise a delivery charge is made which the line-haul carrier adds to its rate. The carriers explain this apparent diversity in practice on the ground that the compresses at East St. Louis to which free delivery is made are all located upon the St. Louis Terminal Railway, of which they are joint owners, while at Memphis the compresses are located upon independent lines. They argue, therefore, that delivery to compresses on the St. Louis Terminal Railway is delivery upon their own rails, the charge for which they may lawfully absorb, but that at Memphis delivery is upon the lines of other carriers and the refusal to absorb those charges can not amount to undue discrimination.

We are of opinion that the carriers' contention is sound and that the difference in practices at East St. Louis and Memphis does not constitute undue discrimination against Memphis. *Manufacturers Ry. Co. v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 93; 32 I. C. C., 100. Furthermore, the delivery service accorded shippers of cotton at Arkansas points is under conditions substantially dissimilar to those existing at Memphis. We do not consider that Memphis is unduly prejudiced on account of these practices.

Complainants particularly call to our attention the interstate rates on rough rice from Arkansas points to Memphis when compared with the state rates within Arkansas. The interstate rates from Arkansas points to Memphis are blanketed for distances ranging from 10 to 125 miles, the blanket rate being, in all instances, 10 cents per 100 pounds. For equal distances in Arkansas the rates range from 4 to 9 cents. The following table shows: (1) The interstate rough rice rates from various Arkansas stations to Memphis; (2) the Arkansas state rate for like distances; and (3) the rates from Louisiana points to New Orleans for like distances prescribed by the Railroad Commission of Louisiana.

Arkansas stations.	Miles to Memphis.	Present rates to Memphis.	Arkansas intrastate rates.	Rates from Louisiana points to New Orleans.
Decker ville.....	28	10.0	4.0	5.25
Nettleton.....	60	10.0	5.5	8.5
Jonesboro.....	64	10.0	6.0	8.75
Bono.....	72	10.0	6.5	10.25
Sedgwick.....	78	10.0	6.5	10.25
Hoxie.....	86	10.0	7.0	10.25
Chillico.....	91	10.0	7.5	10.25
Grubbs.....	97	10.0	7.5	10.25
Amagon.....	104	10.0	8.0	11.5
Success.....	122	10.0	9.0	12.0

We are of opinion that the present Arkansas state rates on rough rice discriminate unduly against Memphis. We do not consider, however, that the present 10-cent blanket rate to Memphis is reasonable. The blanket adjustment which carries the same rate for distances ranging from 10 to 120 miles can not be sanctioned upon this record. Taking into consideration a reasonable bridge toll across the Mississippi River at Memphis, we find that reasonable commodity rates on rough rice from Arkansas points to Memphis should not exceed the following per 100 pounds:

	Cents.
20 miles and under.....	5
35 miles and over 20 miles.....	6
50 miles and over 35 miles.....	7
65 miles and over 50 miles.....	8
80 miles and over 65 miles.....	9
100 miles and over 80 miles.....	10
125 miles and over 100 miles.....	11

Complainants also allege that the present bridge tolls between Memphis and Arkansas are unreasonable when compared with the tolls in effect over other bridges. The bridge company does not directly serve the shippers but it is under contract with the carriers which use the bridge to furnish them its facilities. The tolls are paid by the carriers and not the shippers. Thus, the reasonableness of the present tolls is material only in determining the measure of a reasonable rate on freight moving over the bridge. By exhibit it is shown that the tolls of the bridge company vary from 1 to 2 cents per 100 pounds, 2 cents being charged on all but a few of the low rated commodities. The record shows that the bridge was constructed in 1893 at a cost of nearly \$6,000,000; that its tolls have been approved by the Secretary of War; that it has earned an average of 8.8 per cent per annum on its investment; that if the bridge company had been deprived of the traffic of the other carriers resulting from the construction of a second bridge, as it will when the second bridge is completed, its earnings for 1914 from the business of the Frisco alone would have been only 3.92 per cent. Bridge

investments involve special risks, and the owners of bridges may properly be entitled to higher returns than can be expected from less precarious investments. *Railroad Comm. of Iowa v. I. C. R. R. Co.*, 20 I. C. C., 181. Complainants show that the tolls for the bridge across the Ohio River at Louisville are less than those here in effect, but no facts are given to show that similar conditions exist there to make the comparison of value. We are unable to find on this record that the present bridge tolls are excessive or that to add the amount thereof to an otherwise reasonable rate would make the resulting rate unreasonable.

Complainants further allege that—

sundry rules, regulations, and exceptions to classifications, etc., in effect over the lines of defendant carriers between stations in Arkansas and between stations in Missouri are unjustly discriminatory against Memphis in favor of the Arkansas points.

These rules, regulations, and exceptions to classifications are not specifically set forth in the pleadings. To establish the alleged undue discrimination the complainants at the hearing merely referred to the rules and regulations embodied in Standard Distance Tariff No. 3 of the Arkansas commission. We are of opinion that the allegations concerning such rules, regulations, and exceptions to classifications, with the exception of those more fully referred to herein, are so general that the carriers could not be put upon notice sufficient to require them to defend, and hence they are not properly in issue.

Since the main issues of this case are so extensive, involving as they do the entire rate adjustment of the defendant carriers, both state and interstate, between Memphis, St. Louis, and East St. Louis and Arkansas and Missouri points, and since the new Standard Distance Tariff No. 5 applicable on intrastate traffic in Arkansas has only recently gone into effect, thus modifying to some extent at least the rates within Arkansas at the time of filing the petition herein, we will not issue a final order, except as to those particular rates and practices which were more specifically alleged and upon which specific and final findings have been made, until an opportunity has been had for further hearing and argument by any party feeling its interests prejudiced by the findings herein. This case will therefore be held open and, with the exceptions above noted, the final order held in abeyance. Within 30 days from the service of this report any interested party may file exceptions to any part of our general findings with regard to the interstate class and commodity rates of the defendant carriers herein found just and reasonable. Whatever objections are made should be directed specifically against particular rates, either class or commodity, between particular points.

An appropriate order will be entered at once covering the specific issues involved.

APPENDIX.

Class rate comparison basing on St. Louis, Iron Mountain & Southern Railway class scale.

	Miles.	1	2	3	4	5	A	B	C	D	E
Memphis to L'Anguille, interstate rates under attack	53	52	40	35	27	21	23	18	15	14	11
Distance rates from Missouri to Arkansas points ¹	53	47	39	35	30	28	28	26	19	16.5	12
Distance rates between Arkansas and Oklahoma points ²	53	47	39	31	25	19	21	17	15	12	9.5
Distance rates, Louisiana to Arkansas points ³	53	54	44	41	34	28	28	26	19	16.5	12
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520	53	28	26	24	22	18	19	16	13	11	9
From Memphis to Hamlin, Miss., via Y. & M. V. ⁴	53	52	43	36	31	26					
From Memphis to Sardis, Miss., via Illinois Central ⁵	50	47	40	30	27	22					
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ⁶	53	35	32	28	23	17	18	13	11	9	7
Memphis to Rio Vista, Ark., interstate rates under attack	85	62	53	43	33	26	29	22	18	15	12
Distance rates from Missouri to Arkansas points ¹	85	59	50	46	39	35	35	32	25	20	15
Distance rates between Arkansas and Oklahoma points ²	85	59	48	39	32	25	27	22.5	19.5	15	12.5
Distance rates, Louisiana to Arkansas points ³	85	64	54	51	42	36	36	33	26	20.5	15
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520	85	38	35	31	27	23	24	21	18	14	11
From Shreveport, La., to Homan, Ark., per S. W. L. tariff 38-G	85	73	59	44	38	32	33	27	26	24	20
From Memphis to Bobo, Miss., via Y. & M. V. ⁴	84	58	49	42	36	29					
From Memphis to Scooby, Miss., via Illinois Central ⁵	87	58	46	36	32	27					
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ⁶	85	44	40	34	29	21	22	17	14	11	9
Memphis to Little Rock (interstate rate)	149	70	60	45	36	27	29	22	18	15	12
Distance rates from Missouri to Arkansas points ¹	149	82	71	66	59	45	47	42	36	27	20
Distance rates between Arkansas and Oklahoma points ²	149	73	62	54	47	37	38	31	27	21	17
Distance rates, Louisiana to Arkansas points ³	149	85	74	61	54	46	48	43	37	27.5	20.5
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520	149	58	52	45	40	32	33	31	26	21	16
From Cairo, Ill., to Alicia, Ark., per S. W. Lines tariff 45-K	140	70	59	46	39	31	33	26	22	17	13
From Shreveport, La., to Gum Springs, Ark., per S. W. L. tariff 38-G	148	98	82	68	57	50	51	45	36	33	26
From Memphis to Isenberg, Miss., via Y. & M. V. ⁴	142	66	57	47	40	33					
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ⁶	149	60	53	45	37	28	30	23	18	16	11
Memphis to Knoxville, Ark., interstate rates under attack	236	91	78	62	47	38	40	33	28	24	19
Distance rates from Missouri to Arkansas points ¹	236	112	98	79	70	54	56	51	47	36	29
Distance rates between Arkansas and Oklahoma points ²	236	98	86	75	66	51	52	42	35.5	27.5	22
Distance rates, Louisiana to Arkansas points ³	236	112	98	77	70	54	56	51	46.5	35.5	26.5

¹ Between points on the Iron Mountain, as per S. W. L. tariff 45-K.

² Between points on the Missouri Pacific, as per Mo. Pac. tariff I. C. C. A-1032.

³ From points in Louisiana to points in Arkansas, as per S. W. L. tariff 38-G.

⁴ Only the level of the first class is strictly comparable.

⁵ Not filed.

Class rate comparison basing on St. Louis, Iron Mountain & Southern Railway class scale—Continued.

	Miles.	1	2	3	4	5	A	B	C	D	E
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520.....	236	78	68	59	50	42	43	38	32	24	19
From Cairo, Ill., to Ewa, Ark., per S. W. L. tariff 45-K.....	235	87	72	60	49	35	39	31	26	23	18
From St. Louis, Mo., to Alicia, Ark., per S. W. L. tariff 45-K.....	239	85	71	56	46	36	38	31	26	20	16
From Shreveport, La., to Felsenthal, Ark., per S. W. L. tariff 38-G.....	236	107	95	83	71	55	58	50	42	36	29
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	236	78	71	59	44	34	37	27	22	18	15
Memphis to Fort Smith, interstate rates under attack.....	308	100	85	65	49	39	41	34	29	27	23
Distance rates, Missouri to Arkansas points, per S. W. Lines tariff 45-K.....	308	133	112	91	80	61	63	58	54	43	35
Distance rates between Arkansas and Oklahoma points ²	308	112	99	87	76	59	61	49	40	30.5	24.5
Distance rates, Louisiana to Arkansas ³	308	133	112	91	78	61	63	58	53.5	42.5	31.75
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520.....	308	94	82	70	59	47	48	44	37	29	24
From Cairo, Ill., to Alsip, Ark., per S. W. Lines tariff 45-K.....	309	106	90	68	63	46	49	39	34	28	22
From St. Louis, Mo., to Penters Bluff, Ark., per S. W. L. tariff 38-G.....	305	100	85	73	55	44	46	39	31	25	23
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	308	84	78	65	48	38	41	31	28	24	19
Memphis to Benton, Ark., interstate rates under attack.....	171	81	68	54	41	32	36	28	25	21	17
Distance rates from Missouri to Arkansas points ⁴	171	94	80	71	64	48	50	45	40	30	23
Distance rates between Arkansas and Oklahoma points ²	171	82	71	62	54	42	43	34.5	29.5	23.5	18.5
Distance rates, Louisiana to Arkansas points ³	171	97	83	67	60	49	51	46	41.5	30.5	22.75
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520.....	171	65	59	53	44	37	38	34	28	21	18
From Cairo, Ill., to Norfolk, Ark., per S. W. L. tariff 45-K.....	169	94	81	72	52	45	48	39	29	26	21
From Shreveport, La., to Camden, Ark., per S. W. L. tariff 38-G.....	171	72	62	60	56	42	43	39	31	24	18
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	171	66	59	51	40	30	32	25	19	17	12
Memphis to Smithton, Ark., interstate rate under attack.....	228	91	81	67	57	41	44	36	30	25	20
Distance rates from Missouri to Arkansas points ⁴	228	109	95	77	69	53	55	50	46	35	28
Distance rates between Arkansas and Oklahoma points ²	228	96	84	73	65	50	51	41	35	27	21.5
Distance rates, Louisiana to Arkansas points ³	228	112	98	77	70	54	56	51	46.5	35.5	26.5
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520.....	228	78	68	59	50	42	43	38	32	24	19
From Cairo, Ill., to Austin, Ark., per S. W. L. tariff 45-K.....	228	84	70	55	44	32	34	27	23	20	15
From St. Louis, Mo., to Hoxie, Ark., per S. W. L. tariff 45-K.....	225	81	68	54	43	32	35	28	24	20	16
From Shreveport, La., to La Pile, Ark., per S. W. L. tariff 38-G.....	229	105	94	81	71	55	58	50	42	36	29
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	228	77	70	58	43	32	34	27	22	18	15
Memphis to Emmett, Ark., interstate rates under attack.....	253	105	93	86	69	55	59	44	38	35	29
Distance rates from Missouri to Arkansas points ⁴	253	118	102	81	73	56	58	53	49	38	32
Distance rates between Arkansas and Oklahoma points ²	253	102	90	79	69	54	55	44	37	28.5	22.5
Distance rates, Louisiana to Arkansas points ³	253	118	102	81	73	56	58	53	48.5	37.5	28
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520.....	253	82	72	62	53	43	44	40	33	25	20

¹ Not filed.

² Between points on the Missouri Pacific, as per Mo. Pac. tariff I. C. C. A-1032.

³ From points in Louisiana to points in Arkansas, as per S. W. L. tariff 38-G.

⁴ Between points on the Iron Mountain, as per S. W. L. tariff 45-K.

Class rate comparison basing on St. Louis, Iron Mountain & Southern Railway class scale—Continued.

	Miles.	1	2	3	4	5	A	B	C	D	E
From Cairo, Ill., to Argenta, Ark., per S. W. L. tariff 45-K.....	252	90	75	55	44	32	34	27	23	20	15
From St. Louis, Mo., to Tuckerman, Ark., per S. W. L. tariff 45-K.....	252	87	72	57	47	37	39	32	26	20	16
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	253	80	73	61	45	34	37	29	24	20	18
Memphis to El Dorado, Ark., interstate rates under attack.....	284	107	93	78	59	43	46	38	30	26	22
Distance rates from Missouri to Arkansas points ²	284	127	108	87	78	59	61	56	52	41	34
Distance rates between Arkansas and Oklahoma points ³	284	108	96	84	73	57	59	47	38.5	30	24
Distance rates, Louisiana to Arkansas points ⁴	284	127	108	87	76	59	61	56	51.5	40.5	30.25
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520.....	284	89	78	67	57	45	46	42	35	27	22
From Cairo, Ill., to Traskwood, Ark., per S. W. L. tariff 45-K.....	285	101	83	64	49	38	41	33	30	26	20
From St. Louis, Mo., to Russell, Ark., per S. W. L. tariff 45-K.....	283	94	79	63	48	37	39	32	26	21	17
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	284	81	76	64	46	37	41	30	26	22	18
Memphis to La Grange, Ark., interstate rates under attack.....	59	52	44	37	29	23	23	20	15	13	10
Distance rates from Missouri to Arkansas points ²	59	49	40	36	32	30	30	27	20	17.5	12
Distance rates between Arkansas and Oklahoma points ³	59	49	39	33	27	20	22	18	16	12.5	10
Distance rates, Louisiana to Arkansas points ⁴	59	56	46	43	36	30	30	27	20	17.5	13
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520.....	59	30	28	26	24	19	20	17	14	12	9
From Memphis to Lula, Miss., via Y. & M. V. ⁵	56	52	44	37	32	26					
From Memphis to Batesville, Miss., via Illinois Central ⁵	59	52	42	34	28	24					
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	59	36	33	29	24	17					
Memphis to McGehee, Ark., interstate rates under attack.....	146	75	66	55	42	33	35	29	23	20	17
Distance rates from Missouri to Arkansas points ²	146	82	71	66	59	45	47	42	36	27	20
Distance rates between Arkansas and Oklahoma points ³	146	73	62	54	47	37	38	31	27	21	17
Distance rates, Louisiana to Arkansas points ⁴	146	85	74	61	54	46	48	43	37	27.5	20.5
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520.....	146	58	52	45	40	32	33	31	26	21	16
From Cairo, Ill., to Alicia, Ark., per S. W. Lines tariff 45-K.....	146	70	59	46	39	31	33	26	22	17	13
From Shreveport, La., to McBryde, Ark., per S. W. L. tariff 38-G.....	145	96	80	68	56	48	49	43	35	32	25
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	146	60	55	45	37	28	30	23	18	16	11
Memphis to Kimball, Ark., interstate rates under attack.....	190	92	77	63	48	36	40	33	26	24	22
Distance rates from Missouri to Arkansas points ²	199	97	83	72	65	49	51	46	42	31	24
Distance rates between Arkansas and Oklahoma points ³	190	86	74	65	57	45	46	36	31	24.5	19.5
Distance rates, Louisiana to Arkansas points ⁴	190	100	86	69	62	50	52	47	42.5	31.5	23.5
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520.....	190	67	61	54	45	38	39	35	29	22	18
From Cairo, Ill., to Wood Spur, Ark., per S. W. L. tariff 45-K.....	189	79	67	53	41	32	34	27	22	18	14
From St. Louis, Mo., to Corning, Ark., per S. W. L. tariff 45-K.....	192	78	64	53	43	31	33	28	23	17	13
From Shreveport, La., to Smackover, Ark., per S. W. L. tariff 38-G.....	190	98	85	77	65	50	53	45	38	31	24

¹ Not filed.² Between points on the Iron Mountain, as per S. W. L. tariff 45-K.³ Between points on the Missouri Pacific, as per Mo. Pac. tariff I. C. C. A-1062.⁴ From points in Louisiana to points in Arkansas, as per S. W. L. tariff 38-G.⁵ Only the level of the first class is strictly comparable.

Class rate comparison basing on St. Louis, Iron Mountain & Southern Railway class scale—Continued.

	Miles.	1	2	3	4	5	A	B	C	D	E
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	190	68	61	52	41	31	33	26	20	18	13
Memphis to Warren, Ark., interstate rates under attack.....	203	100	84	71	52	42	44	34	28	24	19
Distance rates from Missouri to Arkansas points ²	203	103	89	74	67	51	53	48	44	33	26
Distance rates between Arkansas and Oklahoma points ³	203	91	79	69	61	48	49	39	33	28	20
Distance rates, Louisiana to Arkansas points ⁴	203	106	92	73	66	52	54	49	44.5	33.5	25
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520.....	203	74	65	57	48	41	42	37	31	23	19
From Cairo, Ill., to Kensett, Ark., per S. W. L. tariff 45-K.....	204	81	70	54	42	32	34	27	23	20	15
From St. Louis, Mo., to Peach Orchard, Ark., per S. W. L. tariff 45-K.....	203	80	65	53	43	31	33	28	23	17	13
From Shreveport, La., to El Dorado, Ark., per S. W. L. tariff 35-G.....	203	102	88	77	65	50	53	45	38	32	25
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	203	74	66	56	43	32	34	27	22	18	15
Memphis to Myrtle, Ark., interstate rates under attack.....	285	90	77	62	47	38	40	33	27	24	19
Distance rates from Missouri to Arkansas points ²	285	127	108	87	78	59	61	56	52	41	34
Distance rates between Arkansas and Oklahoma points ³	285	108	96	84	73	57	59	47	38.5	30	24
Distance rates, Louisiana to Arkansas points ⁴	285	127	108	87	76	59	61	56	51.5	40.5	30.25
Distance rates, Oklahoma to Texas stations, authorized in 26 I. C. C., 520.....	285	89	78	67	57	45	46	42	35	27	22
From Cairo, Ill., to Booth Spur, Ark., per S. W. L. tariff 45-K.....	288	98	83	74	53	48	50	41	30	28	21
From St. Louis to Russell, Ark., per S. W. L. tariff 45-K.....	283	94	79	63	48	37	39	32	26	21	17
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	285	81	76	64	46	37	41	30	26	22	18
Memphis to Poplar Bluff, Mo., interstate rates under attack.....	161	54	46	38	33	28	29.5	20.5	16.5	16	12.5
Distance rates from Missouri to Arkansas points ²	161	91	77	69	62	47	49	44	39	29	22
From Cairo, Ill., to Tuckerman, Ark., per S. W. L. tariff 45-K.....	159	72	60	47	40	32	34	27	22	17	13
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	161	64	57	49	39	30	32	25	19	17	12
Memphis to Gads Hill, Mo., interstate rates under attack.....	206	84	65	53	43	33	34	26	21	19	16
Distance rates from Missouri to Arkansas points ²	206	103	89	74	67	51	53	48	44	33	26
From Cairo, Ill., to Earnharts, Ark., per S. W. L. tariff 45-K.....	201	83	69	61	47	37	39	34	26	22	19
From St. Louis, Mo., to Mollus, Ark., per S. W. L. tariff 45-K.....	205	80	65	53	43	31	33	28	23	17	13
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	206	74	66	56	43	32	34	27	22	18	15
Memphis to Bismarck, Mo., interstate rates under attack.....	251	90	70	55	45	34	35	30	25	20	17
Distance rates from Missouri to Arkansas points ²	251	118	102	81	73	56	58	53	49	38	32
From Cairo, Ill., to Calico Rock, Ark., per S. W. L. tariff 45-K.....	249	90	79	70	51	44	46	38	28	25	21
From St. Louis, Mo., to Tuckerman, Ark., per S. W. L. tariff 45-K.....	252	87	72	57	47	37	39	32	26	20	16
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	251	80	73	61	45	39	37	29	24	20	18

¹ Not filed.

² Between points on the Iron Mountain, as per S. W. L. tariff 45-K.

³ Between points on the Missouri Pacific, as per Mo. Pac. tariff I. C. C. A-1032.

⁴ From points in Louisiana to points in Arkansas, as per S. W. L. tariff 35-G.

Class rate comparison basing on St. Louis Southwestern Railway class scale.

	Miles.	1	2	3	4	5	A	B	C	D	E
Memphis to Fargo, Ark., interstate rates under attack.....	82	52	44	37	29	23	24	20	15	14	12
Distance rates, Arkansas to Oklahoma points, Mo. Pac. I. C. C. 1032.....	82	59	48	39	32	25	27	22.5	19.5	15	12.5
Distance rates, Louisiana to Arkansas points, S. W. L. tariff 38-G.....	82	59	50	46	39	35	35	32	25	20	15
Rates from Cairo, Ill., to Greenway, Ark., S. W. L. tariff 45-K.....	82	66	56	44	36	26	28	22	18	15	11
Rates from Shreveport, La., to McNeill, Ark., S. L. S. W. I. C. C. 3143.....	84	53	44	36	29	23	25	20	16	13	12
Rates from Memphis to Clarksdale, Miss., on Y. & M. V. R. R. ¹	78	56	48	41	35	28	.....	.....	.....	.....	.....
Rates from Memphis to Oakland, Miss., on I. C. R. R. ¹	78	56	45	36	31	26	.....	.....	.....	.....	.....
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ²	82	44	40	34	29	21	22	17	14	11	9
Memphis to Clarendon, Ark., interstate rates under attack.....	101	65	54	41	32	27	29	22	18	15	12
Distance rates, Arkansas to Oklahoma points, Mo. Pac. I. C. C. 1032.....	101	64	53	43	37	29	30	25	22	17	14
Distance rates, Louisiana to Arkansas points, S. W. L. tariff 38-G.....	101	68	59	56	52	40	42	37	30	23	17
Distance rates, Oklahoma to Texas points, prescribed in 26 I. C. C., 520.....	101	46	42	37	34	28	29	25	22	17	14
Rates from Cairo, Ill., to Halliday, Ark., S. W. L. tariff 45-K.....	101	66	56	44	36	27	30	23	20	17	13
Rates from Shreveport, La., to Buena Vista, Ark., S. W. L. tariff 38-G.....	103	68	59	56	52	40	42	37	30	23	17
Rates from Memphis to Shelby, Miss., on Y. & M. V. ¹	98	60	52	44	37	30	.....	.....	.....	.....	.....
Rates from Memphis to Memphis Junction, Miss., on I. C. R. R. ¹	99	60	48	36	33	28	.....	.....	.....	.....	.....
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ²	101	50	44	38	32	27	28	20	16	14	10
Memphis to Stuttgart, Ark., interstate rates under attack.....	121	70	60	45	36	27	29	22	18	15	12
Distance rates, Arkansas to Oklahoma points, Mo. Pac. I. C. C. 1032.....	121	68	57	49	42	33	34	28.5	24.5	19	16
Distance rates, Louisiana to Arkansas points, S. W. L. tariff 38-G.....	121	76	65	62	57	43	44	40	33	26	19
Distance rates, Oklahoma to Texas points, prescribed in 26 I. C. C., 520.....	121	52	47	41	37	30	31	28	25	19	16
Rates from Cairo, Ill., to Brookland, Ark., S. W. L. tariff 45-K.....	119	66	56	44	36	27	30	23	20	17	13
Rates from Shreveport, La., to Van Duzer, Ark., S. W. L. tariff 38-G.....	121	76	65	62	57	43	44	40	33	26	19
Rates from Memphis to Shaw, Miss., on Y. & M. V. ¹	124	64	55	46	39	32	.....	.....	.....	.....	.....
Rates from Memphis to Coffeyville, Miss., on I. C. R. R. ¹	116	60	50	38	33	28	.....	.....	.....	.....	.....
Arkansas intrastate rates, Standard Freight Distance Tariff No. 3 ²	121	55	48	42	35	28	30	22	17	15	10
Memphis to Pine Bluff, Ark., interstate rates under attack.....	154	70	60	45	36	27	29	22	18	15	12
Distance rates, Arkansas to Oklahoma points, Mo. Pac. I. C. C. 1032.....	154	74	64	56	49	38	39	32	27.5	21.5	17.5
Distance rates, Louisiana to Arkansas points, S. W. L. tariff 38-G.....	154	85	74	67	60	46	48	43	37	28	21
Distance rates, Oklahoma to Texas points, prescribed in 26 I. C. C., 520.....	154	60	55	48	42	34	35	32	27	21	17
Rates from Cairo, Ill., to Waldenburg, Ark., S. W. L. tariff 45-K.....	153	75	68	45	38	29	30	25	21	17	13
Rates from Monroe, La., to Kress City, Ark., S. W. L. tariff 38-G.....	155	102	88	77	65	50	53	45	38	33	26
Rates from Shreveport, La., to Draughton, Ark., S. W. L. tariff 38-G.....	154	85	74	67	60	46	48	43	37	28	21
Arkansas intrastate rates, Standard Freight Distance Tariff No. 3 ²	154	62	55	47	38	28	30	24	18	16	11

¹ Only the level of the first class is strictly comparable.

² Not filed.

Class rate comparison basing on St. Louis Southwestern Railway class scale—Continued.

	Miles.	1	2	3	4	5	A	B	C	D	E
Memphis to Fordyce, Ark., interstate rates under attack.....	194	90	78	62	49	36	39	31	27	23	18
Distance rates, Arkansas to Oklahoma points, Mo. Pac. I. C. C. 1032.....	194	87	75	66	58	46	47	37	31.5	25	19.5
Distance rates, Louisiana to Arkansas points, S. W. L. tariff 38-G.....	194	100	86	73	66	50	52	47	43	32	25
Rates from Monroe, La., to Bardell, Ark., S. W. L. tariff 38-G.....	194	115	98	87	71	55	58	50	42	36	29
Rates from Shreveport, La., to Altheimer, Ark., S. W. L. tariff 38-G.....	196	100	86	73	65	50	52	45	38	32	25
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	194	71	63	54	42	32	33	26	20	18	13
Memphis to Onalaska, Ark., interstate rates under attack.....	215	100	89	76	57	41	44	36	30	25	20
Distance rates, Arkansas to Oklahoma points, Mo. Pac. I. C. C. 1032.....	215	94	82	71	63	49	50	40	34	26.5	21
Distance rates, Louisiana to Arkansas points, S. W. L. tariff 38-G.....	215	106	92	75	68	52	54	49	45	34	27
Rates from Monroe, La., to Bayless, Ark., S. W. L. tariff 38-G.....	216	115	98	87	71	55	58	50	42	36	29
Rates from Shreveport, La., to England, Ark., S. W. L. tariff 38-G.....	215	102	88	75	65	50	53	45	38	33	26
Arkansas intrastate rates per Standard Freight Distance Tariff No. 3 ¹	215	76	68	57	43	32	34	27	22	18	15
Memphis to Buena Vista, Ark., interstate rates under attack.....	235	101	90	78	60	46	50	38	32	28	23
Distance rates, Arkansas to Oklahoma points, Mo. Pac. I. C. C. 1032.....	235	98	86	75	66	51	52	42	35.5	27.5	22
Distance rates, Louisiana to Arkansas points, S. W. L. tariff 38-G.....	235	112	98	79	70	54	56	51	47	36	29
Rates from Monroe, La., to Morelocks, Ark., S. W. L. tariff 38-G.....	233	115	98	87	71	55	58	50	42	36	29
Rates from Shreveport, La., to Olena, Ark., S. W. L. tariff 38-G.....	235	112	98	79	70	54	56	50	42	36	29
Arkansas intrastate rates per Standard Freight Distance Tariff No. 3 ¹	235	78	71	59	44	34	37	27	22	18	15
Memphis to Weiner, Ark., interstate rates under attack.....	87	58	48	38	30	23	25	19	17	14	12
Distance rates, Arkansas to Oklahoma points, Mo. Pac. I. C. C. 1032.....	87	61	51	41	33	26	27	23	20	15.5	13
Distance rates, Louisiana to Arkansas points, S. W. L. tariff 38-G.....	87	61	52	47	41	36	37	33	26	21	15
Rates from Cairo, Ill., to Pratt, Ark., S. W. L. tariff 45-K.....	87	66	56	44	36	26	28	22	18	15	11
Rates from Memphis to Alligator, Miss., on Y. & M. V. R. R. ²	88	58	50	43	36	29	.....	.....	.....	.....	.....
Rates from Memphis to Scobey, Miss., on I. C. R. R. ²	87	58	46	36	32	27	.....	.....	.....	.....	.....
Arkansas intrastate rates, Standard Freight Distance Tariff No. 3 ¹	87	45	41	35	30	22	24	17	14	11	10
From Memphis to Paragould, Ark., interstate rates under attack.....	129	55	48	40	32	24	26	21	16	14	12
Distance rates, Arkansas to Oklahoma points, Mo. Pac. I. C. C. 1032.....	129	69	58	50	43	34	35	29	25	19.5	16
Distance rates, Louisiana to Arkansas points, S. W. L. tariff 38-G.....	129	76	65	62	57	43	44	40	33	26	19
Distance rates, Oklahoma to Texas points, prescribed in 26 I. C. C. 520.....	129	52	47	41	37	30	31	28	25	19	16
Rates from Cairo, Ill., to Jonesboro, Ark., S. W. L. tariff 45-K.....	128	66	56	44	36	27	30	23	20	17	13
Rates from Shreveport, La., to Millville, Ark., S. W. L. tariff 38-G.....	128	76	65	62	57	43	44	40	33	26	19
Rates from Memphis to Shaw, Miss., on Y. & M. V. ²	124	64	55	46	39	32	.....	.....	.....	.....	.....
Rates from Memphis to Water Valley, Miss., on I. C. R. R. ²	129	60	50	40	33	28	.....	.....	.....	.....	.....
Arkansas intrastate rates, Standard Freight Distance Tariff No. 3 ¹	129	55	48	42	35	28	30	22	17	15	10

¹ Not filed.

² Only the level of the first class is strictly comparable.

Class rate comparison basing on St. Louis Southwestern Railway class scale—Continued.

	Miles.	1	2	3	4	5	A	B	C	D	E
Memphis to Campbell, Mo., interstate rates under attack.....	166	78	63	50	40	30	33	28	22	18	15
Distance rates on Cotton Belt between Missouri and Arkansas stations, as per St. L. S. W. tariff I. C. C. 3014.....	166	91	77	69	62	47	49	44	39	29	22
Rates from Cairo, Ill., to Dalby, Ark., on Cotton Belt, S. W. L. tariff 45-K.....	167	80	68	52	39	30	32	27	23	20	15
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	166	64	57	49	39	30	32	25	19	17	12
Memphis to Nome, Mo., interstate rates under attack.....	200	78	63	50	40	30	33	28	22	18	15
Distance rates on Cotton Belt between Missouri and Arkansas stations, as per St. L. S. W. tariff I. C. C. 3014.....	200	100	86	73	66	50	52	47	43	32	25
Rates from Cairo, Ill., to Brinkley, Ark., on Cotton Belt, S. W. L. tariff 45-K.....	202	90	75	55	44	32	34	27	23	20	15
Arkansas intrastate rates, Standard Freight Distance Tariff No. 3 ¹	200	71	63	54	42	32	33	26	20	18	13
Memphis to Delta, Mo., interstate rates under attack.....	225	78	63	50	40	30	33	28	22	18	15
Distance rates on Cotton Belt between Missouri and Arkansas stations, as per St. L. S. W. tariff I. C. C. 3014.....	225	109	95	77	69	53	55	50	46	35	28
Rates from St. Louis to Arkansas destinations on Cotton Belt, S. W. L. tariff 45-K.....	225	81	66	53	43	31	33	27	22	17	13
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3 ¹	225	77	70	58	43	32	34	27	22	18	15
Memphis to Ilmo, Mo., interstate rates under attack.....	238	78	63	50	40	30	33	28	22	18	15
Distance rates on Cotton Belt between Missouri and Arkansas stations, as per St. L. S. W. tariff I. C. C. 3014.....	238	112	98	79	70	54	56	51	47	36	29
Rates from Cairo, Ill., to Stuttgart, Ark., on Cotton Belt, S. W. L. tariff 45-K.....	236	90	75	55	44	32	34	27	23	20	15
Rates from St. Louis to Rector, Ark., on Cotton Belt, S. W. L. tariff 45-K.....	233	81	66	53	43	31	33	27	22	17	13
Arkansas intrastate rates, Standard Freight Distance Tariff No. 3 ¹	238	78	71	59	44	34	37	27	22	18	15

¹ Not filed.*Class rate comparison basing on Chicago, Rock Island & Pacific Railway class scale.*

From—	Miles.	1	2	3	4	5	A	B	C	D	E
Memphis to—											
Little Rock ¹	157.3	70	60	45	36	27	29	22	18	15	12
Pine Bluff.....											
Thebes, Ill., to—											
Hoxie ²											
Jonesboro ³	147.9	66	56	44	36	27	30	23	20	17	13
Nettleton ⁴											
Imboden ⁵											
Memphis to Little Rock ¹	141	70	60	45	36	27	29	22	18	15	12
Little Rock to Junction City, La. ⁶	147.7	75	68	65	62	49	49	44	35	30	25
Little Rock to Monroe, Okla. ⁷	155.2	67	59	52	38	30	32	27	20	17	15
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3.....	150	60	53	45	37	28	30	23	18	16	11
Memphis to Hartford, Ark. ⁸	280	100	85	65	49	39	41	34	29	27	23
Thebes to Benton, Ark. ⁹	288	101	83	64	49	38	41	33	30	26	20
Thebes to Arkadelphia, Ark. ¹⁰	330	106	90	70	64	46	49	40	34	28	22
St. Louis, Mo., to Brinkley, Ark. ¹¹	338	100	85	65	49	37	39	32	27	23	18
St. Louis, Mo., to Springdale, Ark. ¹²	344	100	82	66	51	40	42	35	27	24	21

¹ S. W. L. tariff 45-K.² Average distance.³ St. L., I. M. & S., S. W. L. tariff 45-K.⁴ St. L. S. W., S. W. L. tariff 45-K.⁵ St. L. & S. F., S. W. L. tariff 45-K.⁶ S. W. L. tariff 55-I.⁷ S. W. L. tariff 15.⁸ C., R. I. & P., S. W. L. tariff 45-K.

Class rate comparison basing on Chicago, Rock Island & Pacific Railway class scale—Con.

From—	Miles.	1	2	3	4	5	A	B	C	D	E
Arkansas intrastate rates, per Standard Freight Distance Tariff No. 3.....	316	84	78	65	48	38	41	31	28	24	19
Memphis to Haskell, Ark. ¹	163.7	81	68	54	41	32	36	28	25	21	17
Little Rock to Bernice, La. ²	163	80	75	70	64	49	51	45	35	30	25
Oklahoma City to Nowie, Tex. ³	167.4	63	58	51	43	36	37	33	28	21	17
Shreveport to Lamont, Tex. ⁴	163.1	61	56	51	49	35	36	33	28	20	16
Memphis to Ola, Ark. ¹	208.4	77	68	58	43	34	37	30	23	19	17
Little Rock to Jonesboro, La. ⁵	206.9	91	82	73	64	50	52	45	35	30	25
Little Rock to Wilburton, Okla. ²	202.3	69	61	55	40	33	35	30	22	20	17
Oklahoma City to Boyd, Tex. ³	207.4	74	65	57	48	41	42	37	31	23	19
Shreveport to New Caney, Tex. ⁴	202	71	65	58	56	40	41	37	31	22	17
Memphis to Booneville, Ark. ¹	251.8	86	73	60	45	36	38	32	25	22	18
Little Rock to Alexandria, La. ⁵	276.3	88	75	64	58	50	51	40	30	25	20
Little Rock to Stuart, Okla. ²	253.4	82	70	61	45	38	39	32	26	21	19
Oklahoma City to Kopperl, Tex. ³	255.8	82	72	62	53	43	44	40	33	25	20
Shreveport to Bennetts, Tex. ⁴	249	105	92	74	71	54	58	51	40	28	21
Memphis to El Dorado, Ark. ¹	264.4	107	93	78	59	43	46	38	30	26	22
Little Rock to Alexandria, La. ⁵	276.3	88	75	64	58	50	51	40	30	25	20
Oklahoma City to Meridian, Tex. ³	270.1	86	75	65	55	44	45	41	34	26	21
Shreveport to Santo, Tex. ⁴	263	105	92	74	71	54	58	51	40	28	21

¹ F. A. Lelands I. C. C. 1058.⁴ F. A. Leland's I. C. C. 1005.² F. A. Leland's I. C. C. 960.⁵ F. A. Leland's I. C. C. 1037.³ F. A. Leland's I. C. C. 1048.*Class rate comparison basing on St. Louis & San Francisco Railroad class scale.*

	From Memphis to—	Miles.	1	2	3	4	5
Rates under attack.....	Clarksdale.....	18	28	23	19	15	12
Comparable point ¹ on Y. & M. V. ²	Lake Cormorant.....	20	36	31	26	22	19
Comparable point ¹ on I. C. ³	Neshitt.....	18	28	24	19	16	15
Arkansas intrastate scale ⁴		18	22	19	17	15	11
Rates under attack.....	Deckerville.....	28	34	29	24	19	15
Comparable point ¹ on Y. & M. V. ²	Robinsonville.....	28	39	34	28	24	21
Comparable point ¹ on I. C. ³	Loos.....	28	33	28	21	18	17
Arkansas intrastate scale ⁴		28	27	25	21	17	13
Rates under attack.....	Truman.....	47	43	37	30	24	19
Comparable point ¹ on Y. & M. V. ²	Clayton.....	45	48	40	34	29	24
Comparable point ¹ on I. C. ³	Sardis.....	50	47	40	30	27	22
Arkansas intrastate scale ⁴		47	32	30	27	22	17
Rates under attack.....	Nettleton.....	60	52	44	37	29	23
Comparable point ¹ on Y. & M. V. ²	Clahoma.....	63	54	45	38	33	27
Comparable point ¹ on I. C. ³	Batesville.....	59	52	42	34	28	24
Arkansas intrastate scale ⁴		60	36	33	29	24	17
Rates under attack.....	Hoxie.....	86	55	48	40	32	24
Comparable point ¹ on Y. & M. V. ²	Alligator.....	88	58	50	43	36	29
Comparable point ¹ on I. C. ³	Scobey.....	87	58	46	36	32	27
Arkansas intrastate scale ⁴		86	45	41	35	30	22
Rates under attack.....	Black Rock.....	94	60	52	40	32	25
Comparable point ¹ on Y. & M. V. ²	Shelby.....	98	60	52	44	37	30
Comparable point ¹ on I. C. ³	Memphis Junction.....	99	60	48	36	33	28
Arkansas intrastate scale ⁴		94	46	42	36	31	23
Rates under attack.....	Ravenden.....	109	62	52	40	32	25
Comparable point ¹ on Y. & M. V. ²	Renova.....	111	62	54	45	38	31
Comparable point ¹ on I. C. ³	Torrance.....	109	60	48	36	33	28
Arkansas intrastate scale ⁴		109	50	44	38	32	27

¹ Only the level of the first classes strictly comparable.² Y. & M. V. tariff, I. C. C. No. 3818.³ Illinois Central tariff, I. C. C. No. 477a.⁴ Not filed.

Class rate comparison basing on St. Louis & San Francisco Railroad class scale—
Continued.

	From Memphis to—	Miles.	1	2	3	4	5
Rates under attack.....	Hardy.....	126	62	52	40	32	25
Comparable point ¹ on Y. & M. V. ²	Shaw.....	124	64	55	46	39	32
Comparable point ¹ on I. C. ³	Water Valley.....	129	60	50	40	33	28
Arkansas intrastate scale ⁴		126	55	48	42	35	28
Rates under attack.....	Mammoth Spring.....	142	62	52	40	32	25
Comparable point ¹ on Y. & M. V. ²	Isenberg.....	142	66	57	47	40	33
Comparable point ¹ on I. C. ³	West.....	143	63	51	38	35	29
Arkansas intrastate scale ⁴		142	60	53	45	37	28

¹ Only the level of the first classes strictly comparable.² Illinois Central tariff, I. C. C. No. 4776.³ Y. & M. V. tariff, I. C. C. No. 3818.⁴ Not filed.

Rates on selected commodities from Memphis to different destinations in Arkansas on the St. Louis & San Francisco Railroad, and rates for comparable distances, interstate or intrastate, in Nebraska, Minnesota, Mississippi, and Arkansas.

Commodity.	To Marlon, 10 miles.		To Deckerville, 28 miles.		To Nettleton, 60 miles.		To Hoxie, 86 miles.	
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
Coal:								
From Memphis.....	100		100		125		140	
Alabama state rates for similar distance, Frisco tariff 72-D (intrastate, not filed).....	80		100		100		120	
Arkansas intrastate scale ¹	50		50		65		85	
Wheat:								
From Memphis.....	6		7		9		10	
Nebraska state rates for equal distance, Mo. Pac. I. C. C. A-134.....	4.25		5.52		8.07		10.62	
Minnesota state rates for equal distance, C. G. W. I. C. C. 4892.....	4.5		8		10.5		12	
Comparable distances per I. C.-Y. & M. V. tariff I. C. C. 3777.....	11		12.5		15.5		17.5	
Arkansas intrastate scale ¹	5		6		8		9	
Corn:								
From Memphis.....	5	12	6	19	7	29	8	32
Nebraska state rates for equal distance, Mo. Pac. I. C. C. A-134.....	4.25	9	5.1	16	6.37	25	8.92	33
Minnesota state rates for equal distance, C. G. W. I. C. C. 4892.....	4.5	8	8	12	10.5	16	12	19
Comparable distances per I. C.-Y. & M. V. tariff I. C. C. 3777.....	7.5		10		12.5		15	
Arkansas intrastate scale ¹	4	10	5	15	7	20	8	24
Corn meal:								
From Memphis.....	5	12			7	29	8	32
Nebraska state rates for equal distance, Mo. Pac. I. C. C. A-134.....	4.25	9			6.37	25	8.92	33
Minnesota state rates for equal distance, C. G. W. I. C. C. 4892.....	4.25	8			10.5	16	12	19
Comparable distances per I. C.-Y. & M. V. tariff I. C. C. 3777.....	7.5				12.5		15	
Arkansas intrastate scale ¹	5	10			9	18	10	20
Flour:								
From Memphis.....	6	12			9	29	10	32
Nebraska state rates for equal distance, Mo. Pac. I. C. C. A-134.....	4.25	9			8.07	25	10.62	33

¹ Not filed.

Rates on selected commodities from Memphis to different destinations in Arkansas on the St. Louis & San Francisco Railroad, and rates for comparable distances, interstate or intrastate, in Nebraska, Minnesota, Mississippi, and Arkansas—Continued.

Commodity.	To Marion, 10 miles.		To Deckerville, 28 miles.		To Nettleton, 60 miles.		To Hoxie, 86 miles.	
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
Flour—Continued.								
Minnesota state rates for equal distance, C. G. W. I. C. C. 4892.....	4.5	8	.....	.....	10.5	16	12	19
Comparable distances per I. C.—Y. & M. V. tariff I. C. C. 3777.....	11	.....	.....	.....	15.5	.....	17.5	.....
Arkansas intrastate scale ¹ .	5	10	.....	.....	9	18	10	20
Cottonseed meal, carloads:								
From Memphis.....	5	.....	.....	.....	6	.....	6	.....
Arkansas-Oklahoma-Missouri rates for similar distance, per S. W. L. tariff 40-C.....	5	.....	.....	.....	9	.....	10	.....
Texas local rates per Fonda's I. C. C. 16.....	5	.....	.....	.....	8.5	.....	10	.....
Oklahoma local rates per S. W. L. 55-B (intrastate, not filed).....	4	.....	.....	.....	8.4	.....	9.8	.....
Arkansas intrastate scale ¹ .	3	.....	.....	.....	5	.....	6	.....
Cottonseed hulls, carloads:								
From Memphis.....	5	.....	.....	.....	6	.....	6	.....
Arkansas-Oklahoma-Missouri rates for similar distance, per S. W. L. tariff 40-C.....	5	.....	.....	.....	8.5	.....	10	.....
Texas local rates per Fonda's I. C. C. 16.....	5	.....	.....	.....	5.5	.....	6.5	.....
Oklahoma local rates per S. W. L. 55-B (intrastate, not filed).....	3.7	.....	.....	.....	5.6	.....	6.2	.....
Arkansas intrastate ¹	3	.....	.....	.....	3.5	.....	4	.....
Fertilizers:								
From Memphis.....	6½	12	.....	.....	8	16	9	18
Rates from Memphis to Arkansas points prescribed in 18 I. C. C., 5, decided 1910.....	6	12	.....	.....	8	16	9	18
Arkansas intrastate ¹	4	8	.....	.....	6	12	6.5	13
Bagging and ties:								
From Memphis.....	8	12	.....	.....	12	20	12	30
Rates from Houston, Tex., for comparable distances, per Fonda's I. C. C. 16.....	6	8	.....	.....	18	24	18	21
Arkansas intrastate ¹	5	7.5	.....	.....	8	12	9	12.5

Commodity.	To Black Rock, 94 miles.		To Ravenden, 109 miles.		To Hardy, 126 miles.		To Mammoth Spring, 142 miles.	
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
Coal:								
From Memphis.....	150	.....	155	.....	155	.....	155	.....
Alabama state rates for similar distance, Frisco tariff 72-D.....	120	.....	140	.....	160	.....	160	.....
Arkansas intrastate scale ¹ .	90	.....	95	.....	105	.....	110	.....
Wheat:								
From Memphis.....	10	.....	10	.....	10	.....	10	.....
Nebraska state rates for equal distance, Mo. Pac. I. C. C. A-134.....	11.05	.....	11.9	.....	12.75	.....	13.6	.....
Minnesota state rates for equal distance, C. G. W. I. C. C. 4892.....	12.25	.....	13	.....	14	.....	15	.....
Comparable distances per I. C.—Y. & M. V. tariff I. C. C. 3777.....	18	.....	18	.....	19	.....	19	.....
Arkansas intrastate scale ¹ .	9	.....	10	.....	10	.....	10	.....

¹ Not filed.

Rates on selected commodities from Memphis to different destinations in Arkansas on the St. Louis & San Francisco Railroad, and rates for comparable distances, interstate or intrastate, in Nebraska, Minnesota, Mississippi, and Arkansas—Continued.

Commodity.	To Black Rock, 94 miles.		To Ravenden, 109 miles.		To Hardy, 126 miles.		To Mammoth Spring, 142 miles.	
	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
Corn:								
From Memphis.....	9	32	10	32	10	32	10	32
Nebraska state rates for equal distance, Mo. Pac. I. C. C. A-134.....	9.35	34	10.2	36	11.05	38	11.9	40
Minnesota state rates for equal distance, C. G. W. I. C. C. 4892.....	12.25	20	13	21	14	23	15	25
Comparable distances per I. C.-Y. & M. V. tariff I. C. C. 3777.....	15	.....	16	.....	17.5	.....	17.5	.....
Arkansas intrastate scale ¹	8	24	9	24	9	24	9	24
Corn meal:								
From Memphis.....	9	32	10	32	10	32	10	32
Nebraska state rates for equal distance, Mo. Pac. I. C. C. A-134.....	9.35	34	10.2	36	11.05	38	11.9	40
Minnesota state rates for equal distance, C. G. W. I. C. C. 4892.....	12.25	20	13	21	14	23	15	25
Comparable distances per I. C.-Y. & M. V. tariff I. C. C. 3777.....	15	.....	16	.....	17.5	.....	17.5	.....
Arkansas intrastate scale ¹	10	22	11	22	11	22	11	22
Flour:								
From Memphis.....	10	32	10	32	10	32	10	32
Nebraska state rates for equal distance, Mo. Pac. I. C. C. A-134.....	11.05	34	11.9	36	12.75	38	13.6	40
Minnesota state rates for equal distance, C. G. W. I. C. C. 4892.....	12.25	20	13	21	14	23	15	25
Comparable distances per I. C.-Y. & M. V. tariff I. C. C. 3777.....	18	.....	18	.....	19	.....	19	.....
Arkansas intrastate scale ¹	11	22	11	22	11	22	11	22
Cottonseed meal, carloads:								
From Memphis.....	6	.....	6	.....	6	.....	10	.....
Arkansas-Oklahoma- Missouri rates for simi- lar distance, per S. W. L. tariff 40-C.....	10	.....	11	.....	13	.....	13	.....
Texas local rates per For- da's I. C. C. 16.....	10	.....	11	.....	12	.....	13	.....
Oklahoma local rates per S. W. L. 65-B.....	10.2	.....	10.6	.....	11.4	.....	12.2	.....
Arkansas intrastate scale ¹	6	.....	7	.....	7	.....	7	.....
Cottonseed hulls, carloads:								
From Memphis.....	6	.....	6	.....	6	.....	10	.....
Arkansas-Oklahoma- Missouri rates for simi- lar distance, per S. W. L. tariff 40-C.....	10	.....	11	.....	12	.....	13	.....
Texas local rates per For- da's I. C. C. 16.....	6.5	.....	7	.....	7.5	.....	8	.....
Oklahoma local rates per S. W. L. 65-B.....	6.4	.....	6.6	.....	7	.....	7.4	.....
Arkansas intrastate ¹	4.5	.....	5	.....	5	.....	5.5	.....
Fertilizers:								
From Memphis.....	9.5	20	10.5	21	10.5	23	10.5	24
Rates from Memphis to Arkansas points pre- scribed in 13 I. C. C., 8, decided 1910.....	9	18	10	20	10	20	10	20
Arkansas intrastate ¹	6.5	13	7	14	7	14	7	14
Bagging and ties:								
From Memphis.....	14	32	16	32	16	32	16	32
Rates from Houston, Tex., for comparable distances, per Fonda's I. C. C. 16.....	18	33	18	33	18	42	18	45
Arkansas intrastate ¹	9	13.5	10	15	10	15	10	15

¹ Not filed.

Rates on selected commodities from Memphis to different destinations in Arkansas on the St. Louis & San Francisco Railroad, and rates for comparable distances, interstate or intrastate, in Nebraska, Minnesota, Mississippi, and Arkansas—Continued.

Commodity.	To Marion, 10 miles.				To Deckerville, 28 miles.				To Nettleton, 64 miles.				To Hoxie, 86 miles.			
	Horses and mules.	Cattle.	Sheep.	Hogs.	Horses.	Cattle.	Sheep.	Hogs.	Horses.	Cattle.	Sheep.	Hogs.	Horses.	Cattle.	Sheep.	Hogs.
Live stock: ¹																
From Memphis.....	\$12.00	\$12.00	\$10.00	\$11.00	\$22.00	\$21.00	\$17.00	\$19.00	\$28.00	\$24.00	\$19.00	\$22.00	\$32.00	\$28.00	\$24.00	\$28.00
Oklahoma local rates as per S. W. L. scale for similar distances (intrastate, not filed).....	12.60	12.10	10.54	10.54					31.91	22.66	18.70	18.70	28.35	26.62	22.10	22.10
Alabama local rates for similar distances.....	13.00	13.00							33.00	26.00			32.00			
Texas local rates for similar distances.....	19.80	13.20	9.60	9.60					30.80	23.10	18.40	18.40	34.10	28.40	19.20	19.20
as per Fonda's I. C. C. 10 (see note).....	10.00	9.00	7.00	9.00	14.00	11.00	9.00	11.00	18.00	14.00	11.00	14.00	22.00	18.00	16.00	18.00
Arkansas intrastate scale ²																
To Black Rock, 94 miles.																
Commodity.	Horses.	Cattle.	Sheep.	Hogs.	Horses.	Cattle.	Sheep.	Hogs.	To Ravenden, 109 miles.				To Hardy, 126 miles.			
									Horses.	Cattle.	Sheep.	Hogs.	Horses.	Cattle.	Sheep.	Hogs.
Live stock: ¹																
From Memphis.....	\$34.00	\$29.00	\$23.00	\$27.00	\$38.00	\$31.00	\$27.00	\$29.00	\$40.00	\$32.00	\$28.00	\$30.00	\$40.00	\$32.00	\$28.00	\$30.00
Oklahoma local rates as per S. W. L. scale for similar distances.....	30.71	26.60	24.14	24.14	31.45	29.70	25.33	25.33	35.07	31.90	27.71	27.71	37.80	34.10	30.00	30.00
Alabama local rates for similar distances.....	34.00	34.00			36.00	35.00			35.00	35.00			39.00	33.00	24.00	24.00
Texas local rates for similar distances.....	35.20	27.50	20.00	20.00	39.00	33.00	24.00	24.00	37.40	30.25	22.00	22.00	39.00	33.00	24.00	24.00
as per Fonda's I. C. C. 16.....													40.50	41.25	40.00	40.00
Arkansas intrastate scale ²	24.00	19.00	17.00	19.00	28.00	21.00	18.00	21.00	30.00	22.00	20.00	22.00	32.00	23.00	21.00	23.00

NOTE.—Texas charges are based on 22,000 pounds for horses, mules, and cattle; and 16,000 pounds for hogs and sheep single deck.

¹ The foregoing rates apply for cars 36 feet 6 inches in length or less, and are based upon the following minimum weights: Horses and mules, 22,000 pounds; cattle, 22,000 pounds; hogs, single deck, 17,000 pounds; sheep, single deck, 12,000 pounds.

² Not filed.

³ One-line rates.

⁴ Figures shown are over two lines—126 miles being maximum distance possible on C., E. I. & P. in Texas.

No. 6513.

**THOMPSON, RITCHIE & COMPANY, INCORPORATED,
ET AL.**

v.

**VICKSBURG, SHREVEPORT & PACIFIC RAILWAY
COMPANY ET AL.**

**FOURTH SECTION APPLICATIONS Nos. 628, 629, 632, 635,
638, 641, 672, 677, 696, AND 1050 OF F. A. LELAND, AGENT;
No. 601 OF THE VICKSBURG, SHREVEPORT & PACIFIC
RAILWAY COMPANY; AND No. 792 OF THE NEW
ORLEANS, TEXAS & MEXICO RAILROAD COMPANY.**

Submitted December 11, 1914. Decided May 9, 1916.

1. Class and commodity rates between St. Louis and Kansas City, Mo., Memphis, Tenn., defined territories, Atlantic seaboard territory via Gulf and Atlantic ports, New Orleans, La., on interstate or foreign traffic, and points in the state of Texas, on the one hand, and Ruston, La., on the other, found unlawful to the extent stated in the report.
2. Mileage class rates between Ruston and certain points in Arkansas on the Chicago, Rock Island & Pacific Railway, and mileage class rates applicable on interstate traffic between Ruston and other points in Louisiana on the Vicksburg, Shreveport & Pacific Railway, considered in connection with pending decision of other related proceedings.
3. Portions of fourth section applications of defendants which seek authorization to maintain higher class and commodity rates from and to Ruston than from and to Shreveport, Alexandria, and Monroe, La., denied.

G. F. Thomas for complainants.

G. T. Atkins, jr., for Shreveport Chamber of Commerce, intervenor.

C. D. Drayton and *R. Walton Moore* for Vicksburg, Shreveport & Pacific Railway Company.

F. G. Wright for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

R. S. Coleman for St. Louis Southwestern Railway Company.

J. E. Johanson for Chicago, Rock Island & Pacific Railway Company.

C. Schonfelder for Texas & Pacific Railway Company and International & Great Northern Railway Company.

REPORT OF THE COMMISSION.

HALL, *Commissioner*:

The complaint in Docket No. 6513 was filed by merchants and jobbers of Ruston, La., and by the town of Ruston, a municipal corporation. It attacks practically all rates from and to the markets in which Ruston buys or sells goods. These rates are alleged to be unjust, unreasonable, and unduly prejudicial in so far as they exceed the rates between the same markets and Shreveport, Alexandria, and Monroe, La., competing points 65 miles west, 91 miles south, and 31 miles east of Ruston, respectively. The general basis of the complaint is that the adjustment of in and out rates does not give to Ruston the full advantage of its location as compared with these competing points. Violations of the long-and-short haul rule of the fourth section are alleged as to practically all of the rates attacked. It is also pointed out that other violations of that section exist, in that the rates between Ruston and northern and eastern markets are higher in some instances than the aggregates of the intermediate rates to and from Vicksburg, Miss.

The complaint also attacks the mileage rates applicable on interstate traffic between Ruston and other points in Louisiana on the line of defendant Vicksburg, Shreveport & Pacific Railway Company, hereinafter termed the V., S. & P., and the interstate mileage rates between Ruston and points in Arkansas from Junction City to Little Rock, inclusive, on the line of defendant Chicago, Rock Island & Pacific Railway Company, hereinafter termed the Rock Island.

The complaint further attacks the present rates between Ruston and points in Texas, and suggests that they be made by addition of certain differentials to the rates between Shreveport and the same Texas points, but not to exceed the rates to and from Monroe or Vicksburg. At the hearing complainants were permitted to amend this part of their complaint so as to request the same rates between Ruston and points in Texas as apply between Shreveport and points in Texas for the same distances, with the addition of the two-line arbitraries now in effect within the state of Texas, the rates thus arrived at not to exceed the rates to or from Monroe.

The applications of defendants to continue such departures from the long-and-short haul rule of the fourth section as are involved were set for hearing in connection with this proceeding.

Ruston is a town of approximately 3,500 population situated in the northern central part of Louisiana at the junction of the V., S. & P. and the Rock Island. On the rates in effect at the time the complaint was filed its jobbing territory extended about 15 miles east and 15 miles west on the V., S. & P., and about 40 miles north and 40 miles south on the Rock Island. In this territory, wholly within the state

of Louisiana, Ruston comes into active competition with Shreveport, Alexandria, Monroe, and Vicksburg.

The rates attacked may be conveniently divided as follows: (1) Rates from and to St. Louis and Kansas City, Mo., Memphis, Tenn., defined territories, and Atlantic seaboard territory, all rail, and ocean and rail via Atlantic ports; (2) rates from and to Atlantic seaboard territory ocean and rail via Gulf ports, and from and to New Orleans on interstate and foreign traffic moving through that port; (3) rates from and to points in Texas; (4) rates from and to points on the Rock Island, Junction City to Little Rock, Ark., inclusive, and on interstate traffic from and to points in Louisiana on the V., S. & P. These rates will be considered in the order named.

1. ST. LOUIS, KANSAS CITY, MEMPHIS; DEFINED TERRITORIES; AND ATLANTIC SEABOARD TERRITORY VIA ATLANTIC PORTS.

The chief complaint against the rates from and to St. Louis, Kansas City, Memphis, and the other defined territories is that they exceed the rates from and to Shreveport, Alexandria, and Monroe. These three points are, and for many years have been, grouped together and known as the Shreveport group. They take the same rates from and to all northern and eastern markets. When the complaint was filed the rates then in effect were higher, generally speaking, between Ruston and eastern markets than between Shreveport, farther west, and the same markets; between Ruston and northern markets than between Alexandria, farther south, and the same markets; and between Ruston and northern markets than between Monroe, via Ruston or Shreveport, and the same markets. Since the filing of the complaint the defendants have corrected the Ruston adjustment to some extent by putting into effect tariffs carrying rates on classes and many commodities from Memphis and certain other points to Ruston which are the same as to the Shreveport group. No reason appears why this should not be done on all classes and commodities from and to all northern and eastern territories. Ruston is directly intermediate between those territories and the Shreveport group points. No evidence was submitted to justify continuance of the higher rates to and from Ruston; no showing is made that those rates are not just and reasonable or that the present rates to and from the Shreveport group are not just and reasonable. We therefore find and conclude that the class and commodity rates to and from St. Louis, Kansas City, Memphis, and defined territories, on the one hand, and Ruston on the other, are and for the future will be unduly prejudicial to the extent that they exceed the rates via the same routes between the same points and territories and the farther distant points of Shreveport, Alexandria, and Monroe.

The rates between Ruston and Atlantic seaboard territory all rail, and ocean and rail via Atlantic ports, are higher than the rates between the Shreveport group and the same territory via the same ports. The traffic handled to and from Shreveport via the V., S. & P. passes through Ruston en route. That to and from Alexandria via the Rock Island also passes through Ruston en route. No justification for these violations of the long-and-short haul rule of the fourth section was submitted by defendants. No reason appears why these rates also should not be corrected in like manner. We therefore find and conclude that the class and commodity rates between Atlantic seaboard territory, all rail, and ocean and rail via Atlantic ports, and Ruston, are and for the future will be unduly prejudicial to the extent that they exceed the rates between the same territory, via the same routes, and the Shreveport group.

It was shown at the hearing that the rates between northern and eastern markets and Ruston exceeded the aggregate of the intermediate rates to and from Vicksburg. In *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, we found that the applicants in that proceeding had not justified the continuance of through rates from interstate points to points in Louisiana higher than the aggregates of the intermediate rates. Our conclusions are the same in this proceeding as to all through rates from Ruston which exceed the aggregates of the intermediate rates to and from Vicksburg.

2. ATLANTIC SEABOARD TERRITORY VIA GULF PORTS.

From Atlantic seaboard territory via Gulf ports and from New Orleans on interstate and foreign traffic the rates to Ruston are 10 cents per 100 pounds higher on the first four classes and 5 cents higher on the last six classes of the western classification than to the Shreveport group. Ruston receives some commodities through New Orleans which have been brought to that port by ocean steamers from other domestic ports, or from foreign countries, and which move thence on the New Orleans-Ruston rate. As in the case of shipments from the defined territories, Ruston's three competitors, Alexandria, Monroe, and Shreveport, are grouped together on traffic through the Gulf ports.

The rates from Atlantic seaboard territory to Shreveport apply via New Orleans and Vicksburg, and to Monroe via Galveston and Shreveport. In both cases Ruston is an intermediate point via the V., S. & P. No justification for these violations of the long-and-short-haul rule of the fourth section was submitted in this record.

The short-line routes and distances from New Orleans to Ruston, Shreveport, and Monroe are as follows:

	Miles.	Route.
Ruston.....	274	L. R. & N.; Alexandria; C., R. I. & P.
Do.....	285	T. & P.; Alexandria; C., R. I. & P.
Shreveport.....	305	L. R. & N.
Do.....	317	T. & P.
Monroe.....	280	L. R. & N.; Alexandria; St. L., I. M. & S.
Do.....	310	Y. & M. V.; Vicksburg, V., S. & P.

It will be noted that the short route to all three points is via defendant Louisiana Railway & Navigation Company. This defendant was not represented at the hearing. The defendants represented made no attempt, by their own witnesses, to justify higher rates to Ruston than to Shreveport and Monroe. The traffic manager of the Chamber of Commerce of Shreveport intervened for the purpose, as he stated, of "preventing any possible advance in rates to Shreveport as a result of this proceeding." He testified that the rates from New Orleans to Shreveport were established to meet water competition on the Red River; that the river had not been navigated since 1905, except by one boat which made a trip in 1910; and that during the year 1914 the business men of Shreveport had been conducting negotiations with a view to revival of navigation. In *Tewarkana Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 569, at 577, it was said:

The history of class rates from St. Louis and defined territories to Shreveport during the last 25 years indicates that these rates no longer reflect water competition * * *

followed by a table showing that the first-class rate from St. Louis to Shreveport was \$1.10 per 100 pounds in 1899, \$1.17 in 1904, \$1.25 since 1909; and again at 578:

with the disappearance of active water competition to Shreveport the rates have been gradually increased.

Again, at 583:

There is no doubt that the rates from the lower Mississippi crossings to the Shreveport group were originally influenced by active water competition. The extent to which potential water competition should be recognized at the present time is not clear from the record, but the great difference between the rates from lower Mississippi crossings to the Shreveport group and those to points intermediate seems to be unjustifiable. While carriers may properly meet water competition, the maintenance of a lower rate to one point than to other points which are intermediate can not be justified on the ground that it is necessary to suppress water competition.

See, also, *Rates between Shreveport and Tewarkana*, 32 I. C. C., 180, at 182.

In April, 1914, the defendants increased the ocean-and-rail rates from Atlantic seaboard territory via Gulf ports to Shreveport, and there is now on the docket of the Railroad Commission of Louisiana an application of the railroads operating between New Orleans and

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Shreveport to increase the rates between those points. *Case No. 2873 of Railroad Commission of Louisiana.* No attempt was made to rebut the testimony of complainants' witnesses that the Ouachita River, on which Monroe is situated, has not been navigated for many years. Active water competition no longer exists, and "the extent to which potential water competition should be recognized at the present time is not clear from the record." The Commission must act upon the facts as it finds them.

The short-line distance from New Orleans to Ruston is 31 miles less than to Shreveport and 6 miles less than to Monroe. The short route to Ruston is over two lines, but whatever significance may be attached to that fact would seem to be offset by the difference in distance when comparison is made with Shreveport. The short route to Monroe is also over two lines.

Considering all the facts and circumstances of record, it is the finding and conclusion of the Commission that the present rates between Atlantic seaboard territory by ocean and rail via Gulf ports, and Ruston, and between New Orleans and Ruston on interstate and foreign traffic, are and for the future will be unduly prejudicial to Ruston to the extent that they exceed the rates contemporaneously in effect over the same routes to and from Shreveport and Monroe.

8. TEXAS POINTS.

Generally speaking, the class rates from New Orleans to Texas points apply from all other points in Louisiana except Shreveport and a few points in its immediate vicinity. The northeastern part of Texas is the only section of the state in which Ruston appears to be interested. The short-line distance to Marshall, a typical point in that section, is 349 miles from New Orleans, as against 108 miles from Ruston. The through class rates from New Orleans and Ruston to Marshall, which apply through Shreveport, are on a basis of \$1.37 first class, and are considerably greater than the aggregate of the intermediate rates subject to the act to and from Shreveport. The first-class rates from New Orleans and Ruston to Shreveport are 60 and 53 cents, respectively, and the first-class rate from Shreveport to Marshall is 24 cents, making combination rates of 84 and 77 cents, respectively. The rate from Ruston to Shreveport is based on the mileage schedule of the V., S. & P. under attack in this proceeding, and the rate from Shreveport to Marshall was prescribed by this Commission in *Railroad Commission of La. v. St. L. S. W. Ry. Co.*, 23 I. C. C., 31, 46. There does not appear to be any regular basis for the commodity rates, the rates on some commodities,

salt in particular, being higher from Texas points to Ruston than to Monroe, and the rates to Monroe in turn being higher than to Vicksburg. No justification for these violations of the fourth section was submitted by defendants; in fact a representative of the V., S. & P. offered to correct this adjustment in so far as salt is concerned. As was said in *Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co.*, 32 I. C. C., 247, at 248:

* * * the whole system of rates between Texas and Louisiana points is admittedly imperfect and unsatisfactory. Many of the commodity rates are higher than the corresponding class rates; some of the rates on traffic moving from east to west are considerably lower than the rates applicable to traffic moving in the opposite direction; and there are a number of errors in the tariffs, caused either by the carriers or their agent, or by the printer.

It is manifest that the present rates between Ruston and Texas points can not stand. In lieu thereof complainants ask that the scale of rates in effect between Shreveport and Texas points be applied, on a distance basis, between Ruston and Texas points. The rates between Shreveport and certain Texas points on the Texas & Pacific and Houston, East & West Texas railways were prescribed by this Commission in *Railroad Commission of La. v. St. L. S. W. Ry. Co.*, *supra*. After the decision in that case was affirmed by the Supreme Court of the United States the same basis of rates was prescribed to and from points on certain other lines in Texas. *Railroad Commission of Louisiana v. St. L. S. W. Ry. Co.*, 34 I. C. C., 472. Subsequently the tariffs purporting to be in compliance with the supplemental order in that case were suspended for reasons which need not be stated here, and the resulting proceeding with others, including one brought by the complainants in the above cases against all lines in Texas, are now pending. This situation with respect to rates between Shreveport and Texas points, while rendering it inadvisable at this time to prescribe specific rates between Ruston and Texas points, presents no reasons why a proper relation of rates as between the two points should not be established.

The V., S. & P., which is the connecting link between Ruston and Texas, is not a party to any rates between Shreveport and Texas points. The record contains an exhibit showing the density of traffic and earnings per mile of road on this line and typical Texas lines for the year ended January 30, 1912. In the table following the figures for the years ended June 30, 1914 and 1915, taken from the annual reports of the carriers to the Commission, are shown. Some of the Texas lines shown in this table operate mileage outside of the state of Texas, but, with the exception of the Missouri, Kansas & Texas lines, substantially all of their mileage is in Texas. The rails of the V., S. & P. lie wholly within the state of Louisiana.

YEAR ENDED JUNE 30, 1914.

Name of road.	Revenue ton-miles per mile of road.	Revenue passenger- miles per mile of road.	Average number of tons of freight per train- mile	Net operat- ing revenue per mile of road.
Vicksburg, Shreveport & Pacific Ry. Co.....	516,984	126,995	262.80	\$2,352.36
Gulf, Colorado & Santa Fe Ry. Co.....	618,294	82,034	324.49	1,831.37
Houston & Texas Central R. R. Co.....	465,199	95,642	259.42	1,225.68
Missouri, Kansas & Texas lines.....	483,838	105,635	268.01	2,300.52
Texas & Pacific Ry. Co.....	696,123	100,998	249.39	2,342.44
St. Louis Southwestern Ry. Co. of Texas.....	255,450	57,844	159.94	1,91.95
St. Louis, San Francisco & Texas Ry.....	360,460	62,958	283.60	649.88
St. Louis, Brownsville & Mexico Ry. Co.....	196,124	67,991	185.29	1,067.51

YEAR ENDED JUNE 30, 1915.

Vicksburg, Shreveport & Pacific Ry. Co.....	446,422	94,966	273.42	788.11
Gulf, Colorado & Santa Fe Ry. Co.....	775,033	66,667	376.84	2,483.16
Houston & Texas Central R. R. Co.....	542,126	71,708	264.74	1,589.95
Missouri, Kansas & Texas lines.....	585,703	92,788	310.15	2,569.47
Texas & Pacific Ry. Co.....	708,833	85,899	265.62	2,149.91
St. Louis Southwestern Ry. Co. of Texas.....	233,403	41,880	170.91	1,102.43
St. Louis, San Francisco & Texas Ry.....	312,875	47,721	318.03	66.66
St. Louis, Brownsville & Mexico Ry. Co.....	170,028	53,155	188.15	1,099.08

¹ Deficit.

From this table it appears that the traffic density and earning capacity of the V., S. & P. compare favorably with the traffic density and earning capacity of the lines whose mileage is almost wholly in Texas.

In opposition to applying the same scale of rates between Ruston and Texas points as apply between Shreveport and Texas points, the V., S. & P. contends that the rates from New Orleans and other Louisiana points to Texas are made with reference to those from St. Louis, and that any reductions in the rates from Louisiana points would entail similar reductions from St. Louis. It is said that there is a differential relation in the rates from St. Louis and New Orleans to Texas points, the through rates from St. Louis being on a basis of \$1.47 first class, and those from New Orleans on a basis of \$1.87 first class. But the rates from New Orleans and other Louisiana points to a large portion of Texas are greater than the combination of intermediate rates to and from Shreveport, and if the adjustment from those Louisiana points were as sensitive as this defendant claims the disastrous results would already have been realized. It may also be observed that the rates from New Orleans, as to which the claim of rate relation with St. Louis is particularly made, are not in issue in this case.

Considering all the circumstances and conditions, it is the finding and conclusion of the Commission that the present rates between Ruston and Texas points are, and for the future will be, unduly prejudicial to the extent that they exceed, on a distance basis, the rates contemporaneously in effect between Shreveport and Texas points.

4. ARKANSAS AND LOUISIANA POINTS.

The last rates to be considered are the mileage rates between Ruston and points on the Rock Island in Arkansas from Junction City to Little Rock, inclusive, and the mileage rates applicable on interstate traffic between Ruston and points in Louisiana on the V., S. & P. In lieu of the present mileage rates between Ruston and these Arkansas points complainants ask for the Oklahoma-Texas scale of mileage rates prescribed in *Corporation Commission of Oklahoma v. A. & S. Ry.*, 26 I. C. C., 520.

The V., S. & P. extends from Vicksburg to Shreveport, and all its stations, except Vicksburg, are in Louisiana. At the hearing complainants expressly waived any complaint against the rates to and from Vicksburg. The issue here is therefore confined to the mileage rates of this defendant as separately established rates applied to through traffic between Ruston and points in Arkansas on lines having connections with it in Louisiana, such as the St. Louis, Iron Mountain & Southern, reached from Ruston via Monroe, and the Louisiana & North West Railroad, reached from Ruston via Gibbsland. On this traffic, for that part of the haul between Ruston and the junction points of the V., S. & P. and connecting lines, complainants ask for the same mileage rates as to and from the Arkansas points on the Rock Island.

It is not deemed necessary to detail the evidence for and against application of the Oklahoma-Texas scale on the traffic here under consideration. The reasonableness and adjustment of rates to points in this Louisiana-Arkansas territory are the subject of two proceedings decided herewith, in which the evidence of operating conditions, competitive conditions, and other factors generally considered in rate making, is much more complete. *City of Memphis v. C., R. I. & P. Ry. Co.*, 39 I. C. C., 256; *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 224. For these reasons no conclusions regarding the complaint against the mileage rates of the Rock Island and the V., S. & P. will be announced in this proceeding, but defendants will be expected to readjust these rates in harmony with the decisions in those cases.

Our conclusions dispose of those portions of the fourth section applications of defendants which were heard in connection with the complaint. In so far as those applications seek authorization to maintain higher class and commodity rates from and to Ruston than from and to the Shreveport group points, they are denied.

Appropriate orders will be entered.

No. 7329.
SHREVEPORT CHAMBER OF COMMERCE
v.
KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.

FOURTH SECTION APPLICATION No. 461.

Submitted April 2, 1915. Decided May 9, 1916.

Upon complaint alleging that class rates applicable on traffic from Shreveport, La., to certain stations in Arkansas and Oklahoma on the lines of the St. Louis & San Francisco Railroad and the Texas, Oklahoma & Eastern Railroad are unreasonable and unduly prejudicial, *Held*:

1. In view of pending decisions involving the readjustment of class rates in this southwestern territory, the reasonableness *per se* of the rates assailed will not be passed upon in this proceeding.
2. The present rates between Shreveport and the stations in Arkansas and Oklahoma named in the complaint are unduly prejudicial to Shreveport as compared with the class rates applying between said stations and Texas jobbing points. Defendants required to remove the discrimination.

E. C. Cottingham and *Geo. T. Atkins, jr.*, for complainant.

Thomas Bond and *W. M. Powers* for St. Louis & San Francisco Railroad Company and its receivers and St. Louis, San Francisco & Texas Railway Company and its receivers.

F. M. Williams for Texas & Pacific Railway Company.

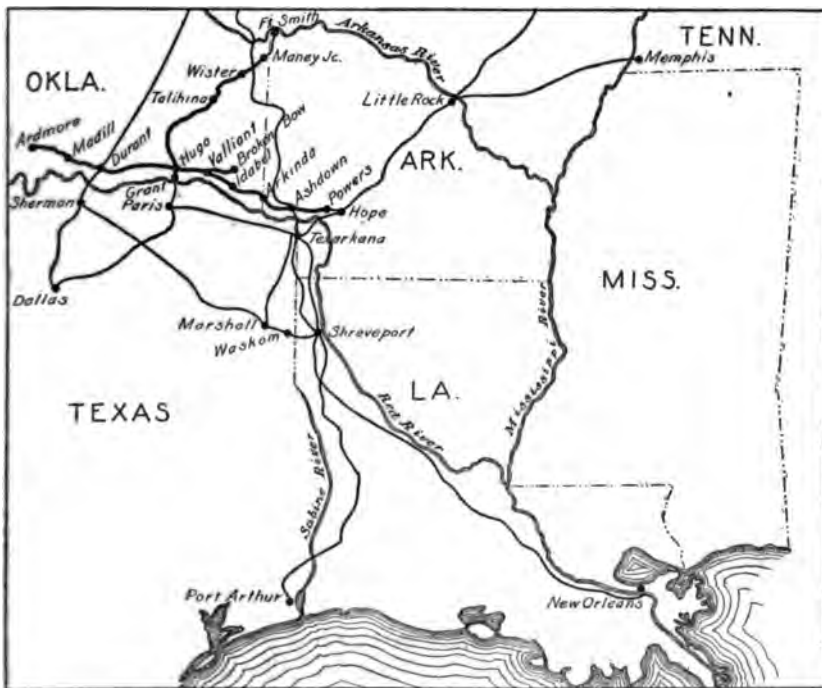
REPORT OF THE COMMISSION.

HALL, Commissioner:

The complainant is a voluntary organization of manufacturers, jobbers, wholesale merchants, and others engaged in business at Shreveport, La. The complaint, filed September 24, 1914, attacks joint class rates from Shreveport to stations on the lines of the St. Louis & San Francisco Railroad Company, hereinafter termed the Frisco, extending westerly from Powers, Ark., to Ardmore, Okla., and northerly from Grant, Okla., to Maney Junction, now Rock Island, Okla., an aggregate of about 350 miles of line; also to stations on the Texas, Oklahoma & Eastern Railroad, a line about 24 miles in length extending easterly from Valliant, Okla., its junction with the Frisco, to Broken Bow, Okla. These rates are alleged to be unreasonable *per se* and also unjustly discriminatory as compared with class rates from Dallas, Fort Worth, Texarkana, Marshall, and other Texas

cities, and from Fort Smith, Ark., to the same destinations. The accompanying map shows the principal points and lines affected.

At the time the complaint was filed the joint rates exceeded in most cases, if not in all, the aggregate of the intermediate rates subject to the act, and at the hearing evidence was taken bearing upon that portion of Fourth Section Application No. 461 which seeks authority to continue such higher joint rates on traffic moving from Shreveport to the stations designated in the complaint. In *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, we found that the applicants in that proceeding had not justified the continuance of through rates from interstate points to points in Louisiana higher than the aggre-



gate of the intermediate rates. Our conclusions are the same in this proceeding as to through rates from Shreveport to the stations named in the complaint.

The hearing was had on February 8, 1915. Subsequently the defendants filed tariff supplements reducing the joint rates from Shreveport to these destinations, effective to Oklahoma points on August 18, 1915, and to Arkansas points on September 2, 1915. The supplements purport to be filed under authority given in section 4 of Fourth Section Order No. 3700, which permits carriers, pending action upon applications under the fourth section, to file with the Commission amendments to their tariffs reducing their through rates

to equal the lowest combination of intermediate rates lawfully published and filed with the Commission. These supplements bear rates which in most instances are substantially lower than the rates under attack. The complainant, however, claims that the new rates also are unreasonable and asks the Commission to prescribe class rates which will conform to the scale prescribed by the Commission in *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 26 I. C. C., 520, hereinafter referred to as the Texas-Oklahoma scale. For convenient comparison the following statement has been prepared of the rates, past, present, and proposed, from Shreveport to representative stations on the defendant lines. All rates in this report are stated in cents per 100 pounds.

Shreveport to—	1	2	3	4	5	A	B	C	D	E
Powers, Ark. (116 miles):										
A.....	80	66	59	53	50	53	45	38	33	26
B.....	79	68	58½	49	35	37	30	25½	25	21
C.....	58	52	45	41	33	34	30	26	20	17
Ashdown, Ark. (92 miles):										
A.....	50	40	35	30	37	38	34	27	21	16
B.....	50	43	35	30	37	38	34	27	21	16
C.....	50	45	40	35	29	30	28	22	18	15
Arkinda, Ark. (114 miles):										
A.....	80	66	59	53	50	53	45	38	33	26
B.....	78	68½	58½	50	43	46	39	33	27	22
C.....	58	52	45	41	33	34	30	26	20	17
Idabel, Okla. (138 miles):										
A.....	91	75	66	58	70	74	65	54	43	36
B.....	84	75	65	57	46	48	43	36	29	23
C.....	63	56	49	44	35	36	34	29	22	18
Valliant, Okla. (155 miles):										
A.....	96	81	72	63	70	74	65	54	43	36
B.....	89	81	70	58	49	52	45	38	29	24
C.....	68	62	54	47	38	39	36	30	23	19
Hugo, Okla. (181 miles):										
A.....	106	89	78	68	70	74	61	48	39	34½
B.....	89	81	71	60	50	52	46	38	29	24
C.....	75	68	60	50	42	43	39	32	24	20
Durant, Okla. (233 miles):										
A.....	126	106	93	81	70	74	64	44	39	34½
B.....	96	84	73	62	52	54	47	39	30	24
C.....	86	75	65	55	46	47	42	35	26	21
Madill, Okla. (251 miles):										
A.....	130	111	94	87	70	74	61	48	39	34½
B.....	104	91	79	67	56	58	51	42	32	26
C.....	90	79	68	58	47	48	44	36	27	22
Ardmore, Okla. (275 miles):										
A.....	130	111	94	87	69	72	61	48	39	33
B.....	108	95	82	70	57	59	53	43	33	27
C.....	94	82	71	60	48	49	45	37	28	23
Grant, Okla. (184.5 miles):										
A.....	130	111	97	90	70	74	61	48	39	34½
B.....	86	78	68	59	48	50	45	37	29	24
C.....	75	68	60	50	42	43	39	32	24	20
Talihina, Okla. (257 miles):										
A.....	130	111	97	90	70	74	61	48	39	34½
B.....	104	91	79	67	56	58	51	42	32	26
C.....	90	79	68	58	47	48	44	36	27	22
Wister, Okla. (243 miles):										
A.....	104	91	79	67	56	58	51	42	32	26
B.....	90	79	68	58	47	48	44	36	27	22
Broken Bow, Okla. (179 miles):										
A.....	130	111	97	90	70	74	65	54	43	36
B.....	93	84	74	62	52	54	48	39	30	25
C.....	73	66	59	49	41	42	38	31	23	20

¹ No through rate published.

A. Rate at the time complaint was filed.

B. Present rate.

C. Proposed rate under Texas-Oklahoma scale for application on hauls over more than one line.

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In this comparison the short-line mileage is used. The traffic from Shreveport moves ordinarily to Ashdown, Ark., over the Kansas City Southern Railway, thence via the Frisco, and the mileage to most of the points of destination is measured over that route. In many cases, however, the lowest combination of intermediates is made through Hope, Ark., Texarkana, Ark.-Tex., or Waskom, Tex. The Frisco, as delivering carrier, participates in the through rates from Texas points as well as from Shreveport.

At the hearing it was stated by the principal witness for defendants that the rates from Shreveport were in reality group rates; that practically the same rates were in effect from New Orleans, from nearly the whole of Louisiana, and from western Mississippi; and that a just comparison of rates and distances would require use of the average distance from the New Orleans group, and would result in a much more favorable showing as to the reasonableness of the rates under attack. It was shown at the hearing, however, that at some previous date, in response to request from the Shreveport shippers, the carriers had partially abandoned the New Orleans group basis of rates, as applied to Shreveport, by giving Shreveport lower rates on the first four classes to some of the destinations here considered. It now appears that the defendants, by filing their amendatory supplements since the hearing, have completely abandoned the application of that basis to this traffic. It is therefore unnecessary to consider further defendants' contention that the group basis should not be disturbed. Whatever warrant the carriers may have for grouping Shreveport with New Orleans as to other traffic, there appears to be no sound basis for such grouping here.

Defendants contend that the Commission in prescribing the Texas-Oklahoma scale, in *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, *supra*, did not consider the reasonableness of the rates, but that the sole purpose of that proceeding was to remove an unjust discrimination between Texas jobbers and Oklahoma jobbers. By reference to our reports it will be seen that while, as there stated, the evidence and argument were directed principally to alleged discrimination under the so-called jobbers' scales applicable to the first four classes, in the original report, 23 I. C. C., 688, we passed upon the reasonableness of class and commodity rates from Oklahoma into Texas made on the so-called standard scale, and in our supplemental report, 26 I. C. C., 520, at 523, found defendants' class rates from Oklahoma into Texas to be unreasonable under section 1 of the act to the extent that they exceeded the scale there prescribed. Pursuant to our order thereunder this scale is in effect between Texas jobbing points and the stations in Oklahoma now before us. While the present class rates between Shreveport and the stations in

Arkansas and Oklahoma appear to be out of line, we are not convinced that the carriers should be required to establish class rates between these points which conform to the present Texas-Oklahoma scale. Several proceedings now before the Commission involve the reasonableness and adjustment of rates in this southwestern territory. The records in those proceedings are much more complete than the record here. For these reasons no conclusions regarding the reasonableness *per se* of the present rates between Shreveport and the Arkansas and Oklahoma stations named in the complaint will be announced in this proceeding.

It has already been noted that the Texas-Oklahoma scale is applied by defendants between jobbing points in Texas, of which Dallas and Paris may be taken as representative, and points in Oklahoma. It is charged that the result of such application as compared with the rates applied from Shreveport is unduly prejudicial to Shreveport. In comparison of class rates from various points to which the Oklahoma markets may be considered tributary, the following table is submitted, giving rates from each point to Idabel, Okla., one of the smaller points supplied by jobbers, and which, in location, may be regarded as representative:

To Idabel, Okla	Miles.	1	2	3	4	5	A	B	C	D	E
Present rates from—											
Shreveport.....	138	84	75	65	57	46	48	43	36	29	23
Dallas.....	169	63	58	51	43	36	37	33	28	21	17
Paris.....	68	33	30	28	26	21	22	19	16	13	10
Texarkana.....	99	41	37	34	31	25	26	23	19	15	12
Little Rock.....	192	127	115	104	90	65	74	63	57	45	38
Memphis.....	323	127	115	104	90	65	74	63	57	45	38
St. Louis.....	339	127	115	104	90	66	74	63	57	45	38
New Orleans.....	445	130	111	97	90	70	74	65	54	43	36

While the record is not very full regarding the transportation conditions and circumstances affecting traffic between Shreveport and these Oklahoma stations, as compared with those surrounding traffic between interior Texas points and the same destinations, it supports the conclusion that there is no such dissimilarity in circumstances as would warrant the application of different scales of rates.

The class rates from certain Texas jobbing points to stations on the Frisco, Powers, Ark., to Arkinda, Ark., inclusive, are relatively lower than those from Shreveport to the same destinations, but higher than from Texas points to Oklahoma points. For example, the comparison of rates from Paris, Tex., to Powers, Ark., with rates from Shreveport to Powers and rates from Texas to Oklahoma is shown in the table on the following page.

	1	2	3	4	5	A	B	C	D	E
Paris, Tex., to Powers, Ark. (138 miles) ..	70	60	52	45	36	37	30	26	20½	16½
Shreveport La. to Powers, Ark. (116 miles) ..	79	68	58½	49	35	37	30	25½	25	21
Texas to Oklahoma (138 miles):										
Single line rates.....	55	49	43	39	31	32	30	26	20	16
Joint rates	63	56	49	44	35	36	34	29	22	18

The record discloses no reason why the class rates between Shreveport and these Arkansas stations should be on a higher basis, distance and "joint rate" hauls considered, than that of class rates between Texas points and the same destinations. Discrimination as between rates from Texas to Arkansas and to Oklahoma, respectively, is not alleged or in issue in this proceeding.

Defendants state that reduction of the Shreveport rates would result in a demand from shippers at Little Rock, Ark., for lower rates to the same territory, and that any change in the Little Rock rates would entail adjustment of the rates from Memphis and St. Louis, now grouped with Little Rock, and defined territories beyond. Those contentions can be dealt with on their merits when they arise. We are not convinced that such far-reaching results would follow; but, even if they did, their imminence would not warrant carriers in maintaining unduly prejudicial rates to or from Shreveport. The propriety of grouping Little Rock with Memphis and St. Louis as to traffic to these Oklahoma points is not before us in this proceeding. No evidence was presented relative to rates from Fort Smith, named in the complaint as a competing point.

Shipments from Shreveport to stations on the Frisco, other than Ashdown, move over two lines of railway, and to points on the Texas, Oklahoma & Eastern over three lines. It was suggested at the hearing that the line of the Texarkana & Fort Smith Railway Company, extending from Shreveport to the Texas-Arkansas state boundary, should be considered an additional line, but that carrier forms part of the Kansas City Southern system and is under the same management and control. The conditions are therefore absent which would justify increased rates on account of the "joint rate" haul between Shreveport and Ashdown.

It appeared at the hearing that the rates then in effect from Shreveport to these destinations applied in both directions, with the exception of rates on the first four classes to points on the Frisco from Powers, Ark., to Durant, Okla., which applied only northbound, southbound rates being higher. It was stated that there is little or no southbound traffic, hence no demand for a lower scale of rates in that direction. The rates on all classes which became effective August 18 and September 2, 1915, and which are still in effect, apply

northbound only. There appears to be no substantial reason for thus limiting the application.

It is our conclusion and finding that the present class rates applying between Shreveport and the stations in Oklahoma designated in the complaint are unduly prejudicial to Shreveport. Defendants will be required to establish and maintain for application between Shreveport and said stations in Oklahoma class rates which will not exceed, distance considered, the class rates contemporaneously charged for similar hauls between those stations and points in Texas.

It is also our conclusion and finding that class rates between Shreveport and the designated points in Arkansas which are higher, distance and joint hauls considered, than are class rates between those points and competing Texas points are unduly prejudicial to Shreveport. As to this no order will be issued at this time. The defendants will be expected to properly readjust these rates within 90 days from the service hereof, failing which the matter may be brought to our attention for appropriate action.

Orders will be entered in accordance with the foregoing findings.

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No. 7030.

MEMPHIS FREIGHT BUREAU, FOR BANNING LUMBER
COMPANY ET AL.,
v.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted April 27, 1915. Decided May 9, 1916.

Upon complaint alleging that the rates charged by defendants for the transportation of lumber, logs, bolts, staves, and heading from points on their lines in Arkansas and Louisiana to Memphis, Tenn., are unreasonable and unduly prejudicial; *Held*:

1. The rates of certain carriers on hardwood bolts and pine logs from points in Arkansas to Memphis should be revised to conform with rates on hardwood logs prescribed in *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 38 I. C. C., 432.
2. The rates on pine and cypress lumber to Memphis from points in southeastern Arkansas as compared with the rates on hardwood lumber from the same points to Memphis are unduly prejudicial.
3. The rates on lumber to Memphis from certain stations on the Iron Mountain in Arkansas are in violation of section 4.
4. The rates on lumber to Memphis from stations on the line of the Texas & Pacific Railway, Fouke, Ark., to Morley, La., inclusive, are unreasonable. Reasonable rates prescribed.
5. With the foregoing exceptions the rates applied by defendants to the transportation of lumber from points in Arkansas and Louisiana to Memphis are just and reasonable.
6. The rates on lumber between points in Arkansas as compared with the rates from Arkansas points to Memphis subject Memphis to undue and unreasonable prejudice and disadvantage.
7. No reparation will be awarded.

• *T. K. Riddick* and *J. S. Davant* for complainant.

H. G. Herbel and *F. G. Wright* for St. Louis, Iron Mountain & Southern Railway Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company and receivers thereof.

S. H. West and *E. A. Haid* for St. Louis Southwestern Railway Company.

Thomas Bond for St. Louis & San Francisco Railroad Company and receivers thereof.

REPORT OF THE COMMISSIONER.

HALL, Commissioner:

Complainant is an incorporated commercial organization at Memphis, Tenn. By complaint, filed June 22, 1914, on behalf of numerous

individuals, firms, and corporations engaged in business at Memphis, it alleges that the rates charged by defendants for the transportation of lumber, logs, bolts, staves, and heading from points on their lines in Arkansas and Louisiana to Memphis are unreasonable and unduly prejudicial. Reparation is asked.

The rates in controversy, as disclosed by the complaint, are car-load rates (1) on logs, bolts, staves, and heading from stations in Arkansas within 200 miles from Memphis on the St. Louis, Iron Mountain & Southern Railway, hereinafter termed the Iron Mountain, and on the Chicago, Rock Island & Pacific Railway, hereinafter termed the Rock Island, south of Little Rock, Ark.; and (2) on lumber from all stations in Arkansas on the St. Louis & San Francisco Railroad, hereinafter termed the Frisco, and from all stations in Arkansas and Louisiana on the Iron Mountain and Texas & Pacific Railway, St. Louis Southwestern Railway, and on the Rock Island south of Little Rock. The allegations of undue prejudice and disadvantage embrace (1) the charging of higher rates on pine and cypress lumber than on hardwood lumber; and (2) the maintenance of rates on lumber, logs, bolts, staves, and heading between points in Arkansas, and on lumber to Cairo, Ill., St. Louis, Mo., and other Ohio and Mississippi river crossings, which are relatively lower than the rates to Memphis from the same originating points. All rates in this report are stated in cents per 100 pounds on carload shipments.

Complainant asks for rates to Memphis on logs, bolts, staves, and heading 1 cent higher than the net rates on logs and bolts for corresponding distances between points in Arkansas. The term "net rates" refers to the rates applied on inbound shipments when the manufactured product thereof is reshipped from the milling points. The rates asked on lumber from Arkansas points to Memphis, except from stations on the St. Louis Southwestern and from points near the southern and western boundaries of the state, exceed by 1 cent the Arkansas intrastate rates on lumber for like distances. From the remainder of the territory involved the rates asked by complainant are generally 4 cents less than to Cairo, but as to certain points the only change sought is a reduction of rates on pine and cypress lumber to the hardwood basis.

The relief asked with respect to rates of the Rock Island on hardwood logs, and of the Iron Mountain on hardwood bolts and logs, is supported by our recent decision in *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.* and *Memphis Band Mill Co. v. C., R. I. & P. Ry. Co.*, 38 I. C. C., 432. Those cases did not involve rates of the Rock Island on hardwood bolts or of either of those two defendants on pine logs. But there appears to be no justification for charging higher rates on hardwood bolts or pine logs than on hard-

wood logs, and the last-named defendants will be expected to revise their rates on these commodities from the points here involved to conform with the rates on hardwood logs prescribed in the cases cited. The record discloses that as a general rule rates on staves and heading equal or exceed rates on lumber, and does not sustain complainant's contention that rates lower than on lumber should be applied.

The territory from which rates on lumber are assailed comprises two distinct areas of production. In the district north of the Arkansas River the production of hardwood far exceeds that of pine, and equal rates on hardwood and pine lumber, graduated according to distance, apply from all points in this group. South of the Arkansas River there is a large production of yellow pine and some hardwood as well. From this section blanket rates to Ohio and Mississippi river crossings are maintained, but from certain portions of the blanket, notably southeastern Arkansas, rates on hardwood are lower than on pine and cypress lumber.

Lumber rates from the southwestern yellow-pine blanket to Memphis, Cairo, St. Louis, and other Ohio and Mississippi river crossings were recently considered in *Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 33 I. C. C., 33; *Northbound Rates on Hardwood from the Southwest*, 32 I. C. C., 521, and 34 I. C. C., 708, and *Rates on Lumber from Southern Points*, 34 I. C. C., 652. Our reports in those cases recite the history of lumber rates from the blanketed area and sufficiently describe the general transportation conditions existing in that region.

For a number of years the prevailing rate adjustment on pine and cypress lumber from points in this blanketed territory has been 14 cents to Memphis, 16 cents to Cairo, and 19 cents to St. Louis. Prior to February, 1915, rates on hardwood lumber from northern Louisiana and western and southeastern Arkansas were from 2 to 3 cents lower than rates on pine and cypress. In the *Wisconsin & Arkansas Lumber Co. case*, rates on pine lumber from the northern portion of the blanket to the several gateways were assailed, but were not found to be unreasonable or unduly prejudicial. Our findings in *Northbound Rates on Hardwood from the Southwest*, *supra*, effected an equalization of rates on pine and hardwood lumber from points in Louisiana and southwestern Arkansas, and decreased the disparity as between rates on pine and hardwood from points in southeastern Arkansas. In *Rates on Lumber from Southern Points*, *supra*, which involved proposed increases in rates on pine and hardwood from the southwestern yellow-pine blanket to Cairo, Thebes, St. Louis, East St. Louis, and other points, not including Memphis, we denied an increase of 1 cent per 100 pounds in the rates on

29 I. C. C.

pine, but sanctioned an increase in the rates on hardwood to equal the rates on pine lumber. As a result of our decisions in these cases rates on pine and hardwood lumber from the entire blanket are 16 cents to Cairo and 19 cents to St. Louis, the present rate to Memphis on pine and cypress from practically all points in the blanket is 14 cents, and on hardwood, 14 cents from Louisiana and western and southwestern Arkansas, 13 cents from points in southeastern Arkansas below an irregular line from Camden to Arkansas City, and 11 cents from points between that line and the Arkansas River.

Complainant's contention that rates on pine and cypress lumber from southeastern Arkansas should be reduced to the hardwood basis rests on the assumption that the present rates on hardwood are reasonable and that no higher rates should be charged on pine and cypress. That there are no transportation reasons which justify a difference in rates on these two classes of lumber is conceded, but defendants insist that rates on hardwood, which were originally made lower than on pine and cypress as the result of competitive and commercial conditions, properly should be increased to equal the rates on yellow pine and cypress. Since we found in the *Wisconsin & Arkansas Lumber case, supra*, that the present rates on pine are reasonable, and held in *Northbound Rates on Hardwood from the Southwest, supra*, and *Rates on Lumber from Southern Points, supra*, that the increases in hardwood rates there involved were justified, we can not hold on this record, which presents substantially the same facts, that the rates now effective on pine and cypress should be reduced. We find, however, that the maintenance of higher rates on pine and cypress lumber than on hardwood lumber from points in southeastern Arkansas to Memphis subjects the former description of traffic to undue prejudice and disadvantage.

Complainant's evidence with respect to the reasonableness of rates from the southwestern yellow-pine blanket consists chiefly of comparisons with rates to Memphis from the lumber-producing sections of Mississippi and Louisiana east of the Mississippi River, and with Arkansas intrastate rates. Comparisons were also made of the rates on pine and cypress from southeastern Arkansas with those on hardwood from the same points. Lumber rates from southern Mississippi and Louisiana east of the Mississippi River to Memphis, Cairo, and St. Louis, and points basing thereon, are from 2 to 3 cents per 100 pounds lower than from the southwestern yellow-pine blanket. We found in *Chicago Lumber & Coal Co. v. T. S. Ry. Co.*, 16 L. C. C., 323, that the circumstances and conditions surrounding the transportation of lumber from southern points east and west of the Mississippi River to Ohio and Mississippi river crossings were sub-

stantially dissimilar. In *Rates on Lumber from Southern Points, supra*, the evidence tended to show that the dissimilarity between the two territories is less marked than formerly, but it can not be affirmed upon the record now before us that conditions have changed to such an extent that carriers serving the southwestern yellow-pine blanketed area may not reasonably charge somewhat higher rates to Memphis than are maintained by the lines east of the Mississippi River. One fact to be noted in this connection is that defendants absorb a bridge toll of 1 cent per 100 pounds on lumber shipped from points west of the Mississippi River to Memphis, whereas the east side lines do not incur a like expense on lumber traffic from Mississippi and Louisiana east of the Mississippi River. At the time of the hearing the Arkansas intrastate rates for distances corresponding to those from the blanketed portion of Arkansas to Memphis ranged from 4 to 8 cents per 100 pounds below the present rates to Memphis and were much lower than those found reasonable by this Commission in other cases involving rates from Arkansas to Memphis. This is illustrated by the following table:

To Memphis, Tenn., from—	Report.	Distance.	Rate approved.		Arkansas rates.	
			Per 100 pounds.	Revenue per ton-mile.	Per 100 pounds.	Revenue per ton-mile.
		Miles.	Cents.	Mills.	Cents.	Mills.
Little Rock, Ark.....	18 I. C. C., 391.....	148	10	13.5	6	8.1
Woodson, Ark.....	do.....	165	10	12.1	7	8.5
Fourche, Ark.....	33 I. C. C., 33.....	172	14	16.3	7	8.1
Malvern, Ark.....	do.....	182	14	15.4	7	7.7
Pine Bluff, Ark.....	21 I. C. C., 464.....	191	11	11.5	7	7.8
Thornton, Ark.....	33 I. C. C., 33.....	190	14	14.1	7	7.0
Crossett, Ark.....	do.....	228	14	12.3	9	7.9
Prescott, Ark.....	do.....	244	14	11.5	9	7.4
Wesson, Ark.....	do.....	275	14	10.2	10	7.3
Arkansas blanket ¹	do.....	245	14	11.4	9	7.3
Southwestern yellow-pine blanket ²	do.....	380	14	7.4	12	6.3

¹ Average weighted haul from southwestern yellow-pine blanket in Arkansas.

² Average weighted haul from entire southwestern yellow-pine blanket.

The comparison of the 14-cent blanket rate from Fourche, Malvern, Thornton, Crossett, Prescott, and Wesson to Memphis with the Arkansas mileage scale for corresponding distances is open to the criticism that the distances from those points to Memphis are materially less and the yield per ton-mile proportionately greater than the average from all points in the southwestern yellow-pine blanket. But considering all the facts it is clear that the intrastate rates cited between points in Arkansas are too low to be accepted as a fair measure of the rates that defendants reasonably may charge for the transportation of lumber from Arkansas to Memphis.

The complainant's evidence relating to the rates from the southwestern yellow-pine blanket shows that certain of these rates should be re-adjusted. In *Sawyer & Austin Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 21 I. C. C., 464, we established a rate of 11 cents per 100 pounds on pine lumber from Pine Bluff, Ark., to Memphis, and in *Rates on Lumber from Southern Points, supra*, we held that a proposed increase to 14 cents had not been justified. As noted in the *Sawyer & Austin Lumber Co. case*, shipments from Pine Bluff to Memphis move through Little Rock and Bald Knob, Ark. The present rate of 14 cents on pine lumber from all stations on the Iron Mountain between Pine Bluff and Little Rock violates the long-and-short-haul rule of the fourth section. We find this rate to be unlawful and will enter an order requiring the maintenance of a rate which does not exceed that contemporaneously in effect from Pine Bluff to Memphis.

The rate to Memphis from stations on the Texas & Pacific Railway, Fouke, Ark., to Morley, La., inclusive, is 16 cents. From the other stations on that line the rate to Memphis is 14 cents. The Texas & Pacific was not represented at the hearing, and the record affords no explanation of this departure from the blanket adjustment observed by other lines in the same territory, and which the Texas & Pacific itself observes to Cairo and St. Louis, and also to Memphis with the exception noted. The chief justification for the blanket rate is that it places all producing points in the blanket on an equality. As the carriers voluntarily initiated this system of rate making from a large lumber-producing area, the northern portion of which is contiguous to Memphis, and established rates which are reasonable for the average haul from the entire blanket, they should not be permitted to maintain higher rates from the more distant portions of the blanketed territory without showing good and substantial reasons therefor. The present rate of 16 cents to Memphis from the Texas & Pacific stations indicated fails to harmonize with the prevailing blanket adjustment from this territory and is out of line with the rates of 16 cents to Cairo and 19 cents to St. Louis from the same points. We are of opinion and find that the 16-cent rate is unreasonable to the extent that it exceeds 14 cents.

With the exceptions noted in the preceding paragraphs, we are of opinion and find that the present carload rates on lumber from points in the southwestern yellow-pine blanket to Memphis are just and reasonable.

As previously noted, rates from points north of the Arkansas River are graduated according to distance and apply on lumber of all kinds. Defendants' evidence shows that rates to Memphis are no higher than to Cairo and St. Louis from points of origin equidistant from those gateways, except in a few cases where controlling competi-

tion compels the maintenance of relatively lower rates to Cairo and St. Louis than to Memphis. Complainant admits that aside from competitive considerations such an adjustment is fair and reasonable, and does not seriously contend that the present rates are unreasonable *per se*. No evidence was offered to show that rates from particular points in this territory are improperly aligned, and, considering the rate adjustment as a whole, we find the present rates reasonable.

Lumber dealers at Memphis and Cairo compete in the territory north of the Ohio River which supplies a market for large quantities of southern lumber. Joint through rates on lumber from the south to this northern territory are, as a general rule, equal to the aggregate of the intermediate rates to and from Cairo. The aggregate of the rates to and from Memphis, however, is greater than the through rate, and the rates from Memphis to points north of the Ohio River are 7 cents higher than from Cairo. Since rates to Memphis from the greater portion of the southwestern yellow-pine blanket are but 2 cents less than to Cairo, it is apparent that lumber dealers at Cairo have an advantage over those at Memphis in supplying the northern markets. But it does not follow that this advantage is undue and, therefore, unlawful. The advantageous position which Cairo occupies as a distributing center for lumber moving from the south to the north, and the competitive conditions which have induced the establishment of relatively lower rates to that point than to other Ohio and Mississippi river crossings have been recognized in our decisions in *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.*, 24 I. C. C., 220, and *Lumber Rates from the South to Ohio River Crossings*, 25 I. C. C., 50. In *Memphis Freight Bureau v. I. C. R. R. Co.*, 27 I. C. C., 507, complainant's principal contention was that lumber rates from southern Mississippi and Louisiana, east of the Mississippi River to Memphis, should in all cases be 4 cents less than to Cairo. In that case, as in this, complainant supported its contention by showing that a 4-cent differential was maintained by lines east of the Mississippi River on southbound shipments of lumber and other commodities to points in the southeast. Complainant further shows that the difference in northbound rates from certain southeastern points to Memphis and Cairo on all classes and on various commodities, including lumber, is 4 cents, but it is apparent that a recognized and general differential basis of 4 cents as between Memphis and Cairo does not exist except on southbound traffic to southeastern territory. The facts of record in this proceeding afford no basis for a finding that rates on lumber to Memphis from points in Louisiana and southern Arkansas should be 4 cents less than to Cairo.

The alleged undue prejudice and disadvantage to which Memphis lumber dealers are subjected by reason of the lower basis of rates

maintained by defendants between points in Arkansas is the principal ground of complaint. Lumber dealers at Memphis who testified for complainant stated that their business had been injured and materially restricted in extent because defendants unduly prefer their competitors at Little Rock, Pine Bluff, Benton, Camden, and other Arkansas points by maintaining rates between points in Arkansas which are very much lower than they are required to pay on lumber shipped to Memphis from equally distant points in Arkansas. A comparison of defendants' rates on lumber, in cents per 100 pounds, to Memphis from points in Arkansas distant therefrom approximately as indicated and the Arkansas intrastate rates for corresponding distances is shown below:

Distances.	St. L., I. M. & S. Ry.	C. R. I. & P. Ry.	St. L. & S. F. Ry.	St. L. S. W. Ry.	Arkansas intra- state. ¹
10 miles and under.....	6	.....	5	.....	3
25 miles and over 10.....	6	.....	6	.....	3
50 miles and over 25.....	8	.....	7½	.....	4
75 miles and over 50.....	8-9	.....	8	10	4½
100 miles and over 75.....	9	.....	8	11	5
125 miles and over 100.....	9-11	11	.....	11	6
150 miles and over 125.....	10-11	11	9	11	6
175 miles and over 150.....	11	11	.....	11	7
200 miles and over 175.....	13	13	.....	13	7
225 miles and over 200.....	13-14	13	.....	13	8
250 miles and over 225.....	13	13	.....	14	9
275 miles and over 250.....	13	13	.....	14	10
300 miles and over 275.....	.....	.....	.....	14	13

¹ Rates shown in Arkansas standard distance tariff No. 3.

² 13 cents on pine and cypress.

³ 14 cents on pine and cypress.

The Arkansas intrastate rates named in the above table were in effect when this case was heard and applied generally between points in Arkansas. It appears that since the hearing Arkansas standard distance tariff No. 3 has been superseded by Arkansas standard distance tariff No. 5. This latter tariff is not a part of the record in this proceeding and is not on file with the Commission.

So far as the record in this proceeding discloses, the transportation of lumber over the lines of the Iron Mountain, Rock Island, and Frisco between points in Arkansas, and from points in Arkansas to Memphis, is performed under substantially similar circumstances and conditions, except that the operation of their lines into Memphis necessitates a bridge service for which they pay to the bridge owner a toll of 1 cent per 100 pounds. The St. Louis Southwestern does not reach Memphis over its own rails, but pays the Iron Mountain under contract a division of 3 cents per 100 pounds for moving its traffic from Fair Oaks, Ark., to Memphis, some 60 miles, and pays in addition the bridge toll of 1 cent. It is permitted by the Railroad Commission of Arkansas to charge rates somewhat higher than the Arkansas scale on shipments originating on certain branch lines.

The answer of the St. Louis Southwestern Railway expressly admits that its lumber rates between points in Arkansas—

discriminate in favor of intrastate shippers and dealers and against interstate shippers and dealers in lumber, and give to said intrastate shippers and dealers in lumber an undue and unreasonable preference and advantage over dealers in lumber located at Memphis, and subject such Memphis dealers to undue and unreasonable prejudice and disadvantage.

This admission does not appear in the answers of the other carriers defendant, but the fact is sufficiently apparent from the record that the rates which they apply to the transportation of lumber between points in Arkansas, and from points in that state to Memphis, subject Memphis and its lumber dealers to undue prejudice and disadvantage.

Defendants seek to justify the preferential treatment accorded to shippers of lumber between points in Arkansas by saying that the rates applied to the transportation of such traffic were not established voluntarily, but were forced upon them by state authority. This explanation does not satisfy the requirements of the law. Undue or unreasonable prejudice or disadvantage to interstate shippers is none the less unlawful because it results from the observance of state-prescribed rates. *Railroad Commission of Louisiana v. St. L. S. W. Ry. Co.*, 23 I. C. C., 31, and 34 I. C. C., 472.

As already stated, it is our conclusion and finding that, with the exceptions noted, the present rates on lumber in carloads to Memphis from all stations in Arkansas and Louisiana on the lines of the defendants are just and reasonable. We are of opinion, however, and find, that the application of rates on lumber in carloads from points in Arkansas on the Iron Mountain, Rock Island, and Frisco to Memphis which exceed by more than 1 cent per 100 pounds the rates contemporaneously applied by these defendants to the transportation of like shipments for like distances between points in Arkansas subjects Memphis to undue and unreasonable prejudice and disadvantage. We further find that the application of rates to Memphis on lumber from points in Arkansas on the St. Louis Southwestern within 225 miles from Memphis which exceed by more than 3 cents; from stations over 225 miles and not more than 275 miles from Memphis which exceed by more than 2 cents; and from stations over 275 miles from Memphis which exceed by more than 1 cent the rates contemporaneously applied by that defendant to the transportation of like shipments for like distances between points in Arkansas, subjects Memphis to undue and unreasonable prejudice and disadvantage.

An appropriate order will be entered. No reparation will be awarded.

No. 7779.
PITTSBURGH STEEL COMPANY ET AL.
v.
PITTSBURGH & LAKE ERIE RAILROAD COMPANY.

Submitted January 28, 1916. Decided May 8, 1916.

Upon the facts of record, *Held*, That the defendant, by its refusal to make a furnace allowance to the complainants while at the same time making such allowances to the complainants' competitors in the same industrial district, subjected the complainants to an unlawful disadvantage and prejudice.

Willis F. McCook, Challen B. Ellis, and A. R. Kennedy for complainants.

D. P. Connell for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In *Buffalo Union Furnace Co. v. L. S. & M. S. Ry. Co.*, 21 I. C. C., 620, the service involved was the switching of raw materials from and manufactured products to points of interchange between the connecting trunk lines and the industrial railway of the complainant; and it was held to be unjustly discriminatory for the defendant carriers voluntarily to furnish such a service to some shippers, without charge in addition to the line-haul rate, while at the same time refusing a similar service to the Buffalo Union Furnace Company. The question raised upon the record here is similar in many particulars. The Pittsburgh Steel Company, hereinafter called the complainant, is claiming damages because of the alleged discrimination against it by the defendant's refusal during the period of the action to pay to the complainant's industrial railroad the same allowances on iron ore shipments that were paid by the defendant on that traffic during the same period to the industrial railways of the complainant's competitors in the same industrial district.

Briefly, the facts are these: For some time prior to July 20, 1913, and until March 31, 1914, the tariffs of the Pittsburgh & Lake Erie Railroad Company, the defendant here, authorized the payment, spoken of throughout the record as a "furnace allowance," of \$2.25 on each car of iron ore delivered at a blast furnace in the territory known in the iron and steel trade as the Pittsburgh

district. Ostensibly these payments were made by the defendant to compensate the several industrial railways for switching the ore into the plants of their respective proprietary companies; but in the *Industrial Railways Case*, 29 I. C. C., 212, many witnesses explained the allowances as merely a means by which to equalize the assembling cost of the materials used in the manufacture of pig iron. Whatever may have been the reasons for making such payments, the fact of importance in this proceeding is that the single exception in the defendant's practice in that respect, so far as the record shows, was that no such allowances were ever paid by the defendant to the complainant or to its industrial railroad, although the latter performed identically the same character of switching service as did all the other industrial railways that received such allowances from the defendant during the period in question. The occasion for this discrimination was that the complainant began the operation of blast furnaces at Monessen, in the Pittsburgh district, early in August, 1913, while the investigation of industrial railways, in the case last cited, was in progress. Shortly prior thereto the complainant had incorporated its plant track facilities under the name of the Monessen Southwestern Railway Company and as a common carrier, although the complainant concedes that in a real and practical sense it is but a plant facility operated solely to serve the complainant's blast furnaces and steel mills. The industrial railway is also a complainant here, and in the expectation that it would receive the usual allowances, consistently with the defendant's general practice in the district and with the assurance theretofore given by the defendant, the complainant caused it to file with the Commission a tariff that became effective on July 20, 1913, in which the charge of \$2.25 a car was established for switching ore from its track connections with the defendant to the points of placement inside the complainant's plant. The defendant, however, declined to absorb this charge pending the outcome of the industrial railways investigation then in progress; and by tariff authority that became effective on April 1, 1914, after the report in the *Industrial Railways Case*, *supra*, was announced, and in conformity with its rulings, the defendant discontinued making such allowances out of its rate to any industrial railroads. The complainant, therefore, was never placed on an equality with other iron furnaces in the Pittsburgh district, but throughout the period of the action, and for the reason just explained, was subjected by the defendant to a disadvantage of \$2.25 on each carload of iron ore shipped to it.

In an exhibit of record it is shown that between July 20, 1913, and April 1, 1914, when the defendant discontinued paying allowances, 6,350 cars of ore were shipped over the defendant's line from Lake
39 I. C. C.

Erie ports to the complainant at Monessen, where they were switched by the complainant's industrial railway from its interchange track with the defendant's line to the unloading point within the plant of the steel company. For its line haul to the interchange track with the complainant's industrial railroad the defendant collected from the complainant the same rate that it charged the complainant's competitors for the line haul and the additional service of hauling their carload shipments of ore beyond the interchange tracks and placing them at the points of unloading within the respective plants. That is to say, out of a rate the same as that exacted from the complainant, the defendant paid to the complainant's competitors, through their respective industrial railroads, \$2.25 a car for the service performed by these industrial railways in switching the ore from their interchange connections with the line of the defendant to points of unloading inside the furnace plants. The net transportation charge paid by the complainant's competitors was therefore \$2.25 a car less than the charge paid by the complainant for an identically similar service.

There are located in the Pittsburgh district some of the largest blast furnaces and steel mills to be found in this country, and on most of their traffic, both inbound and outbound, a common or group rate applies. The plant of the Pittsburgh Steel Company, as we have seen, is in this rate district, where it has many powerful competitors. The importance to it of equal treatment by the carriers is therefore manifest. The record makes it abundantly clear that in their trade transactions all the blast furnace operators in that district are controlled by the Pittsburgh price. Being in close competition with one another, they sell their products at the same figure. And, therefore, when one operator pays a greater transportation charge for his ore than his competitor pays, the difference, instead of becoming a part of the selling price, must be absorbed in the cost of production. In this case the record shows that it was so absorbed by the complainant.

On the ground that it was injured by the failure of the defendant to absorb the charge of its industrial railroad and in that form to make the usual allowance of \$2.25 a car, the Pittsburgh Steel Company is here before us asking an award of damages in the sum of \$14,287.50 on the interstate ore shipments received by it from Lake Erie ports and switched, as explained, into its plant by its industrial railroad, between July 21, 1913, and April 1, 1914. The defendant, apparently recognizing the merit of the complaint, made no defense and took no part in the hearing beyond a brief cross-examination of some of the complainant's witnesses; it neither filed a brief nor participated in the oral argument.

Upon the whole record we conclude and find that the failure of the defendant to pay the allowance of \$2.25 a car, either to the Pittsburgh Steel Company or its industrial railway, when such allowances were paid to the complainant's competitors through their industrial railways, subjected the Pittsburgh Steel Company and its industrial railway to unlawful prejudice and disadvantage; that the complainants were thereby damaged to the extent alleged, and that they are entitled to recover damages on the basis of \$2.25 a car for each carload of iron ore received at the blast furnaces of the Pittsburgh Steel Company during the period of the action. Upon the filing of a statement showing the date of each shipment, point of origin, point of destination, route of movement, car number, weight, amount of freight charges paid thereon, and the amount of damages claimed on the basis herein indicated, duly audited and verified by the defendant, the matter will have our further attention, and an appropriate order will be entered.

39 I. C. C.

No. 7399.
EASTERN OREGON LUMBER PRODUCERS' ASSOCIATION
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
ET AL.

Submitted February 11, 1915. Decided May 10, 1916.

Combination rates on lumber and articles taking lumber rates from eastern Oregon producing points on the Oregon-Washington Railroad & Navigation Company to points on the Northern Pacific Railway and Great Northern Railway, and their connections in the states of Montana, North Dakota, South Dakota, Minnesota, and Nebraska, found to be unreasonable and unduly prejudicial, and joint rates based on differentials over the rates from Spokane, Wash., prescribed for the future.

Joseph N. Teal and William C. McCulloch for complainant.

John F. Finerty for Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; and Farmers' Grain & Shipping Company.

Charles Donnelly and L. B. du Pont for Northern Pacific Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

A. C. Spencer and H. A. Scandrett for Oregon-Washington Railroad & Navigation Company and Oregon Short Line Railroad Company.

R. G. Keizer and R. M. Hart for Blackwell Lumber Company, intervener.

Charles E. Patten for Atlas Lumber Company, Reliance Lumber Company, and Day Lumber Company, interveners.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The complaint in this case was brought by the Eastern Oregon Lumber Producers Association on behalf of its nine members, hereinafter referred to as complainants, having mills at Perry, La Grande, Baker, Wallowa, and Elgin in eastern Oregon on the line of the Oregon-Washington Railroad & Navigation Company, hereinafter termed the Oregon-Washington. Baker, a representative point, is about 340 miles south of Spokane, Wash. The complaint grows out of the refusal of the Northern Pacific Railway Company and the Great Northern Railway Company, hereinafter termed the Northern Pacific and the

Great Northern, respectively, to join with the Oregon-Washington in the establishment and maintenance of through routes and joint rates on lumber, and articles taking the lumber rates, from these milling points to all points on the Northern Pacific east of Silver Bow, Mont.; to all points on the Great Northern east of Helena, Mont.; by those lines to points in North Dakota and Minnesota on the Farmers' Grain & Shipping Company's railroad, the Duluth, Winnipeg & Pacific Railway, and the Minneapolis, St. Paul & Sault Ste. Marie Railway; and by the Northern Pacific to all points between Billings, Mont., and Alliance, Nebr., on the Chicago, Burlington & Quincy Railroad. It is alleged that the rates at present in effect, based on the local rates to and from the Northern Pacific and Great Northern junctions with the Oregon-Washington, are unreasonable, and that the present adjustment subjects complainants to undue and unreasonable prejudice and disadvantage, and gives to the mills on the Northern Pacific and Great Northern, in what is known as the Spokane group, an undue and unreasonable preference. We are asked to require the establishment of through routes with joint rates, which to points east of the Montana-Dakota state line will be the same as from the Spokane group, and to points west of that line 2 cents higher than from the Spokane group.

The Atlas Lumber Company, the Day Lumber Company, the Reliance Lumber Company, and the Blackwell Lumber Company intervened at the hearing in opposition to complainants. The first three have mills in the coast group, comprising points in western Washington. The fourth operates at Coeur d'Alene, Idaho, in the Spokane group. All four compete with complainants, and claim that they will be unduly prejudiced and complainants unduly preferred if the rates sought in the complaint are established without a relative reduction from their mills. They contend that joint rates, if established, should be no lower than those applying from the coast group. Generally speaking, the mills in the coast group are about as far west of Spokane as complainants' mills are south of Spokane.

The rates from the eastern Oregon group to the Northern Pacific and Great Northern junctions, from which Spokane group rates apply, range from 15 to 25 cents per 100 pounds, a spread which debars complainants from successful competition with mills in the Spokane group. The initial carrier, the Oregon-Washington, a component of the Union Pacific system, is willing to join in establishing reasonable joint rates to the destinations named, but the Northern Pacific and Great Northern have refused because they desire to reserve the markets on their lines for the mills on their lines. This is their admitted purpose.

The right of a carrier to so reserve or restrict markets on its own lines has repeatedly been denied by this Commission. *Lumber Rates, Oregon and Washington to Eastern Points*, 29 I. C. C., 609, 614, and cases there cited. It must be denied here.

There remains the question of what joint rates would be reasonable and fair.

The present situation is illustrated by the following table, showing rates to several of the destinations from Baker and Spokane as representative of the eastern Oregon and Spokane groups, respectively, and from the coast group. Rates are stated in cents per 100 pounds:

To—	Road.	From Baker.	From Spokane.	From coast group.
Glasgow, Mont.....	Great Northern.....	1 58	33	40
Glendive, Mont.....	Northern Pacific.....	2 53	33	40
Minot, N. Dak.....	Great Northern.....	1 60	35	40
Mandan, N. Dak.....	Northern Pacific.....	2 55	35	40
Grand Forks, N. Dak.....	Great Northern and Northern Pacific..	1 62	37	40
Minneapolis, Minn.....	do.....	2 57	42	45
		2 62	42	45

¹Combination on Spokane.

²Combination on Wallula.

Our attention is called to the fact that while the rate from Baker to Mandan via the Oregon-Washington in connection with the Northern Pacific is 55 cents for a haul of about 1,300 miles, the rate from points in the Spokane group via the Northern Pacific and Great Northern in connection with the Union Pacific system to Denver, Colo., is 33 cents for a haul of about the same length.

There are joint rates from the northwest lumber-producing region to most points in this country. The points of origin in that region are arranged in six rate groups called the coast, intermediate, Spokane, eastern Oregon, Montana 1, and Montana 2 groups. The last five take differentials under the coast group. Such joint rates are in effect on eastbound traffic over the Union Pacific system and its connections from the points where complainant's mills are located, and as to such traffic those points are in the eastern Oregon group and take substantially the same rates as the Spokane group. Mills on the Great Northern in the latter group can ship on joint rates via Spokane and Huntington, Oreg., to destinations on the Union Pacific system and its connections in Colorado, Nebraska, and other states as far south as Texas. From mills on the Northern Pacific in the Spokane group joint rates to the same territory of destination apply via the Silver Bow, Mont., gateway, and from some six mills near Spokane also apply via Spokane and Huntington. These rates from mills on the Great Northern and Northern Pacific are the same as apply via the Oregon-Washington from the

eastern Oregon mills to the same destinations except where the haul is comparatively short. For instance, to all points on the Union Pacific, Harper, Wyo., and east, the rates from all points on the Northern Pacific and Great Northern in the Spokane group are the same as those from the eastern Oregon mills, but to points west of Harper the differentials against that group range from 1 cent to 5½ cents, averaging about 2 cents per 100 pounds.

What complainants seek is a similar adjustment. As indicated, the prayer of the complaint is that joint rates be established from their mills on the Oregon-Washington to destinations on the Northern Pacific and Great Northern and their connections which shall be substantially the same as apply from mills on the Northern Pacific and Great Northern in the Spokane group, except that to destinations west of the Montana-Dakota state line complainants are willing to pay a differential of 2 cents over the rates now in effect from the Spokane group mills, just as the latter pay a differential averaging 2 cents over the eastern Oregon mills of complainants on traffic to Union Pacific destinations west of Harper. Harper is about as far from the Spokane group as the Montana-Dakota state line is from the eastern Oregon group. According to complainants the rates they seek would be slightly higher than the rates for equal distances from mills in the Spokane group to Union Pacific destinations in Colorado and Nebraska.

Complainants instance the great variation in distance from different mills in the same rate group to a given destination, and urge that the general adoption by carriers of the group system in making rates from this territory demonstrates that distance has been discarded as a controlling factor. They contend that, all things considered, the facts of record justify use of the Spokane rates as rates from eastern Oregon.

The northern lines claim that complainants' mills, while not west of Spokane, can not properly be classed with those in the Spokane group except on traffic via the Union Pacific system, and that their election, for purposes of their own, to carry the Spokane rate back to certain mills on their own lines, does not change the natural relation of the eastern Oregon mills to Spokane. No mill on the Northern Pacific or Great Northern over 160 miles west of Spokane is accorded the Spokane group rates. Complainants' mills, as above indicated, are about 340 miles south of Spokane and on the line of another carrier.

The fact that the eastern Oregon mills are accorded substantially the same rates as the Spokane group to destinations on and via the Union Pacific lines is not necessarily a reason for their being placed

in the Spokane group or accorded related rates on traffic to destinations on and via the Northern Pacific and the Great Northern.

Defendants Northern Pacific and Great Northern contend that if joint rates are established they should be based upon the rates from Pacific coast terminals to the various destinations, with an arbitrary added because the haul would involve an additional carrier. Some testimony was offered as to the manner of interchanging carload shipments at Spokane between the Oregon-Washington and the Great Northern, and it was contended that the expense incident thereto was worthy of particular consideration. But the hauls generally exceed 1,000 miles and the carload earnings are substantial. The rates from the Pacific coast group are higher than the rates from the Spokane group by amounts ranging from 3 cents on shipments to Minneapolis to 10 cents on those to Montana points. In this connection we must not lose sight of the fact that the rates from the coast group are for traffic which is hauled over the mountains, and, as we understand the situation, the service from the coast points of origin to Spokane is performed under less favorable conditions than the haul from the eastern Oregon mills.

Upon consideration of all the facts, circumstances, and conditions appearing of record, we are of opinion and find that the present rates are unjust, unreasonable, and unduly prejudicial to the eastern Oregon points and mills and that through routes and joint rates should be established and maintained from the eastern Oregon points to the consuming points in question, such joint rates not to exceed the rates contemporaneously maintained from Spokane by more than amounts ranging from 5½ cents, on shipments to points west of the Montana-Dakota state line, to 2 cents on shipments to Minneapolis and St. Paul, Minn. There seems to be some question among defendants as to the gateway by which these rates should be made to apply. Upon this we express no opinion and will leave that question and the question of divisions to be determined by the carriers themselves.

No order will be entered at this time, but defendants will be expected on or before September 1, 1916, to establish routes and rates in conformity with our conclusion herein. The record will be held open pending such readjustment.

INVESTIGATION AND SUSPENSION DOCKET NO. 735.
SAND FROM INDIANA STATIONS.

Submitted April 5, 1916. Decided May 8, 1916.

Proposed increased rates on sand in carloads from stations in Indiana along the south shore of Lake Michigan to points within the Chicago, Ill., switching limits found not justified and suspended tariffs required to be canceled.

Luther M. Walter and *John S. Burchmore* for protestants.

F. W. Flott for Indiana Harbor Belt Railroad Company.

James Stillwell and *William W. Collin, jr.*, for Pennsylvania lines.

D. P. Connell for New York Central Railroad Company and Michigan Central Railroad Company.

J. F. McWilliams for Baltimore & Ohio Railroad Company.

Robert H. Widdicombe for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect November 1 and November 15, 1915, respondents proposed to increase their rates for the transportation of sand in carloads from points in Indiana along the southern shore of Lake Michigan to points within the Chicago switching limits. The present rates range from \$5.70 per car to 53 cents per ton, and the proposed rates from 25 cents to 50 cents per ton. Except as otherwise mentioned rates in this report are stated in cents per ton of 2,000 pounds. Upon protests by various shippers of sand the schedules were suspended until February 29, 1916, and later until August 29, 1916.

The rates on sand for one-line hauls from producing points in Indiana on the New York Central Railroad, Pennsylvania Company, Baltimore & Ohio Railroad, and Michigan Central Railroad to the northern portion of the Chicago switching district are 5 cents higher than to the southern portion. The dividing line is at Grand Crossing, Ill., on the Pennsylvania and New York Central; South Chicago, Ill., on the Baltimore & Ohio; Kensington, Ill., on the Michigan Central. The present rates over these roads are 21 cents to the southern portion and 26 cents to the northern portion of the

district; the proposed rates, 25 cents and 30 cents, respectively. The present rates over these roads, except the Baltimore & Ohio, to industries on connecting lines anywhere in the switching district, are 42 cents, while the proposed rates are 50 cents. The present rate to industries on other lines from points on the Baltimore & Ohio is 40 cents; the rate proposed, 50 cents. All of the roads propose to reduce the rate to connecting line team tracks from 53 cents to 50 cents, but this reduction is comparatively unimportant, as little traffic would be affected. The Pere Marquette proposed increased rates to take effect simultaneously with the rates just described. The rates thus proposed took effect, but were voluntarily withdrawn after the suspension order herein. The rates applicable from Dune Park, Ind., the sand-producing point on the Indiana Harbor Belt, are rates per car, and range from \$5.70 per car to the nearer stations on the Indiana Harbor Belt in the Chicago switching district between the Illinois-Indiana state line and Argo, Ill., to \$6.50 per car of 80,000 pounds capacity and over at Argo. A flat rate of 25 cents per net ton is proposed in place of these rates. The distances for which the rates involved apply range from 14 miles to 57 miles.

Sand transported under the rates in issue is loaded into the cars by steam shovels. The cars used are frequently self-dumping. The sand is used for grading and filling in the elevation of large yards or railroad tracks and for building purposes. Filling sand is taken from the surface and contains vegetation and other foreign matter, while building sand is found below the top layer and is much cleaner and of better quality than filling sand. Filling sand constitutes the bulk of the movement and is generally transported in cars of 100,000 pounds capacity. Building sand moves in smaller volume and in cars ranging in capacity from 60,000 pounds to 100,000 pounds. The Consumers Company, which operates at Dune Park and ships over the Indiana Harbor Belt, is the principal protestant. During the years 1910 to 1915, both inclusive, it shipped 160,210 cars of filling sand and 31,496 cars of building sand. The other protestants, who operate along the lines of the Pennsylvania, the Baltimore & Ohio, and the Michigan Central, shipped 12,131 cars of sand during the year ended May 1, 1914, and 10,450 cars during the year ended May 1, 1915.

The purpose of the proposed increases is to place sand on the rate basis of the Lowrey tariffs, which applies generally between points in the Chicago switching district. At present sand moving from some of the points pays lower rates than would apply for shorter distances between points on the same line of road within the switching district, and respondents assert that there is no justification for such an adjustment. They contend that the present rates

are unreasonably low and unremunerative, remarking that the transportation is through the congested Chicago terminals, with an empty haul one way. The rates proposed are shown to compare favorably, distance considered, with rates on sand between points where traffic is not so dense. The relative transportation conditions are not shown, however, nor the kind and quality of sand transported, nor the relative volume of movement. Rates on sand from points to the north and west of Chicago range from 30 cents to 53 cents for distances ranging from 33 miles to 99 miles and apply to intrastate traffic except from Beloit and Janesville, Wis. Sand produced at the latter points is of a higher grade than the sand involved, commands a higher price, and moves greater distances than the distances involved, at 35 cents.

Four of the respondents filed statements showing the total shipments of building sand from points on their lines for connecting line delivery in the Chicago switching district during the first two weeks of September, 1915. These statements include 66 cars on the Pennsylvania, 73 on the Baltimore & Ohio, 139 on the Michigan Central, and 268 on the Indiana Harbor Belt. They show gross freight charges received, deductions therefrom on account of per diem, per diem reclaim, and switching charges absorbed, and net revenue. The deductions referred to are considerable in comparison with the gross revenue. The average net revenue of the Michigan Central, Baltimore & Ohio, and the Indiana Harbor Belt was between \$6 and \$6.50 per car; that of the Pennsylvania, between \$8 and \$8.50. Protestants remind us that switching charges in the Chicago district are on a reciprocal basis, so that the switching charges absorbed by one line are made up to some extent by the charges which it collects for switching for other lines. However, we do not value the statements referred to very highly because they omit shipments of filling sand, and shipments delivered by the originating carrier for which it receives all the revenue, and because it is not established that the first two weeks of September constituted a representative period.

The filling sand produced by the Consumers Company is worth about 6 cents per ton f. o. b. cars at the point of origin. It is usually purchased by railroads and is transported in trainloads for short distances to the junction between the Indiana Harbor Belt and the purchasing line in the southern part of the switching district at the rates per car previously described. The movement is usually in cars furnished by the purchasing road and assigned to this use, the proprietary carrier frequently waiving per diem. Building sand is worth about 16 cents per ton at the point of origin. It does not move in trainloads to destinations, but trainloads from the point of origin to the break-up yard of the originating carrier are common. It is

shipped at rates per ton to the east central portion of the Chicago switching district, where building operations are in progress, the hauls being considerably longer than the hauls of filling sand.

The Consumers Company shows that during the period from 1910 to 1915 it shipped an average of 31,951 cars per year by way of the Indiana Harbor Belt from Dune Park to Chicago. The interstate shipments of filling sand during 1914, which may be taken as a representative year, totaled 27,982 cars which moved an average distance of 29.09 miles. The average revenue per car-mile was 21.28 cents; the average revenue per ton-mile, 4.45 mills. The total freight charges collected amounted to \$173,370.63. The same shipments would have earned at the proposed rates 41.07 cents per car-mile and 8.6 mills per ton-mile. The total charges would have been \$334,258.59, or nearly double the charges collected. During the same year 4,242 cars of building sand were shipped interstate from Dune Park for an average distance of 48.22 miles. The rates charged earned 35.19 cents per car-mile and 7.297 mills per ton-mile. The charges that would have accrued at the proposed rates were not computed, but it is testified that they would have been between 25 per cent and 33.33 per cent greater. The protestants, other than the Consumers Company, estimated that the proposed rates would increase their freight charges approximately \$40,000 per year.

Sand is one of the lowest grade commodities transported. It loads heavily, does not require expedited service, is incapable of damage in transit, and moves between the points in enormous volume. The Lowrey tariff basis does not apply to coal and grain, and individual lines except from its provisions sand, grain screenings, slag, crushed stone, and fluxing stone. No transportation reason was offered for excepting coal and grain from the Lowrey basis and not excepting sand.

We find that respondents have not justified the proposed increases, and the suspended tariffs will be ordered canceled.

39 I. C. C.

No. 7468.

FLORIDA CITRUS EXCHANGE

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted April 20, 1915. Decided May 2, 1916.

Defendants' charge for transferring citrus fruit from ventilated box cars into refrigerator cars at Potomac Yard, Va., found to have been justified. Complaint dismissed.

Wm. Hunter for complainant.

R. Walton Moore and *Frank W. Gwathmey* for Atlantic Coast Line Railroad Company; Florida East Coast Railway Company; Washington Southern Railway Company; and Richmond, Fredericksburg & Potomac Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation with headquarters at Tampa, Fla., engaged in marketing the citrus fruit crop of various affiliated fruit growers throughout the state of Florida. By complaint, filed November 5, 1914, it alleges that the charge of \$4 per car imposed by defendants for transferring shipments of citrus fruit from ventilated box cars into refrigerator cars at Potomac Yard, Va., was and is unjust and unreasonable. Reparation is asked in the sum of \$180, the full amount of the transfer charges collected on 45 carload shipments of oranges transferred during the months of November and December, 1912, and January, 1913.

The shipments originated at points in Florida on the Atlantic Coast Line and Florida East Coast railways and moved: Atlantic Coast Line, Florida East Coast, Richmond, Fredericksburg & Potomac, and Washington Southern railways to Potomac Yard; Philadelphia, Baltimore & Washington Railroad, Pennsylvania Railroad and connections to destinations north and east of Potomac Yard. They were made in felt-lined ventilated box cars, hereinafter referred to as ventilator cars, to Potomac Yard, where they were transferred by the Washington Southern Railway at complainant's request into refrigerator cars. Effective December 15, 1911, the Richmond,

Fredericksburg & Potomac Railroad and Washington Southern Railway by joint tariff established the following rule:

When request is made by shippers, consignees, or connecting lines to transfer perishable freight from box cars to refrigerator cars, the service will be performed at Potomac Yard, Va., at a charge of \$4 per car for each shipment so transferred.

Complainant avers that it filed with defendant initial lines, who had knowledge of the prospective citrus fruit movement, orders for refrigerator cars in which to load the shipments involved; that it was furnished with ventilator cars instead, which equipment will not adequately protect perishable commodities from the low temperatures that occur throughout the northern states; and that transfer into refrigerator cars at Potomac Yard was necessary to prevent damage to the shipments by frost. Complainant urges that refrigerator cars are the only proper cars in which to ship citrus fruit to any territory where it has ever done business; and that the initial carriers' failure to furnish such cars in the first instance, which was their duty, ought not to be allowed to cause a charge against shippers for the subsequent transfer of shipments into refrigerator cars. Complainant contends in short that under the conditions described the imposition of any transfer charge is unlawful. The original attack upon the measure of the present charge was abandoned in complainant's brief. Only the carriers operating south of Potomac Yard were represented. They are hereinafter called defendants.

Defendants objected to the introduction of any evidence that did not relate merely to the measure of the transfer charge on the ground that the other issues joined were beyond our jurisdiction. They maintain that the initial carriers' supply of cars is reasonably adequate for the movement and protection of the citrus fruit traffic and that complainant's invariable demand upon the initial lines for refrigerator equipment is wholly unjustified and unreasonable and can not as a practical matter be met. *Interstate Commerce Commission v. I. C. R. R. Co.*, 215 U. S., 452, and *Vulcan Coal & Mining Co. v. I. C. R. R. Co.*, 33 I. C. C., 52, are cited in support of the contentions that the duty of carriers does not extend beyond the maintenance of a reasonably adequate car supply, and that the request for cars which a carrier must prepare itself to meet must be a "reasonable request."

The Florida citrus fruit crop has been transported by defendants for a number of years partly in ventilator cars and partly in refrigerator cars. The ventilator cars are furnished by the initial carriers, the Atlantic Coast Line owning about 17,000 cars of this kind at the present time, the Florida East Coast about 500. The refrigerator

cars used are rented from the Armour Car Lines at three-fourths of a cent per mile on the movement in both directions, loaded and empty. Most of the shipments in refrigerator cars are merely ventilated. Ice is rarely used. Out of about 16,000 refrigerator cars allotted to the Atlantic Coast Line during the season of 1913-14, some 12,000 were used for the movement of citrus fruit, and out of this number only about 1,500 cars were iced. Complainant states that the condition of the fruit at the time of shipment, because of warm and rainy weather in Florida, is sometimes such that icing is necessary. About 10 per cent of its shipments are said to be of this character. When refrigerator cars are furnished, not under ice, the shipper pays no refrigeration or other charge for the use of this equipment.

During the season of 1912-13, when the shipments involved moved, the total citrus fruit crop handled out of Florida by all lines amounted to over 8,000,000 boxes. During the next season, 1913-14, it amounted to about seven and a half million. Complainant furnished about one-fifth of the total crop during the season of 1912-13, and about one-fourth of the 1913-14 crop. Approximately 10 per cent of complainant's annual shipments move before January 1, the remaining 90 per cent usually between January and June. But the bulk of the total Florida citrus fruit crop, excepting grapefruit, which moves in considerable volume in March, April, and May, moves during November, December, and January.

Defendants state that charges ranging from \$2 to \$2.50 per car formerly were imposed for the transfer of citrus fruit from ventilator cars into refrigerator cars at Potomac Yard, which charges are said to have represented only the labor cost. They were discontinued because unauthorized by legal tariffs. Certain amounts previously collected were refunded, and thereupon the present tariff was published. Defendants submitted considerable evidence and several exhibits with respect to the reasonableness of the existing charge, but, as stated before, this issue was abandoned by complainant.

Complainant demands refrigerator cars regardless of the destination of its shipments, but there has been no general demand for such cars by other citrus fruit shippers. Defendants endeavor to furnish all the refrigerator cars demanded and orders for such cars are placed with the Armour Company based on the anticipated citrus fruit crop. But the crops fluctuate both from season to season and from month to month and neither complainant nor other shippers comply with defendants' calls for definite data relative to the quantity or movement of the crops.

Defendants explain that refrigerator cars are designed primarily for refrigeration by means of ice, whereas ventilator cars are spe-

cially constructed for the handling of perishable traffic which does not require icing, but does require more protection than the ordinary box car affords. Ventilator cars not only afford protection against frost, but also afford greater protection against decay than refrigerator cars afford. Decay is more common than freezing, due to the excessive heat or moisture in the shipments attributable to the condition of the fruit when loaded or to damp or warm weather during transit. Ventilator cars are lighter and less valuable than refrigerator cars, and generally secure a return load southbound, while refrigerator cars seldom do. Apparently, too, they do not become unsafe for citrus fruit except when the temperature outside is 10 degrees or less above zero. The minimum temperature while the shipments involved were at Potomac Yard was 12 degrees above zero and only three shipments encountered such cold. Complainant has had shipments go through in ventilator cars to Detroit and other points as far north.

Complainant's claims for loss and damage have decreased during recent years, notwithstanding the percentage of refrigerator cars used for the movement of the total Florida citrus fruit crop has increased. But the proportion of claims so filed, past or present, which were found meritorious and paid is not shown, and there is also no segregation of the claims according to the cause of the damage alleged, such as freezing, decay, etc. The claims filed by all shippers for loss and damage from both freezing and decay, although principally from decay caused by improper ventilation, are said to have increased, and it is suggested that any decrease in the claims filed by complainant is due to the efficiency of complainant's organization in promoting advanced methods of picking, packing, shipping, and distribution to available and profitable markets. Complainant admits that oranges may, and do, freeze in refrigerator cars, and the record shows that complainant had an unusual quantity of fruit arrive frozen during the season of 1913-14, notwithstanding the increase in the number of refrigerator cars which it was furnished.

There is a substantial movement of vegetables in ventilator cars through Potomac Yard to points north. The movement occurs to a considerable extent from January to May, the heaviest month. Vegetable shippers have never required transfers at Potomac Yard, but permit the ventilator cars to go through.

Shipments of citrus fruit from Florida have the advantage of reconsigning service without extra cost, and the fruit is generally sold while in transit or at reconsigning points. Neither the shippers nor the carriers know the ultimate destinations when the shipments start. Potomac Yard is the principal reconsigning point for eastern markets. During the height of the citrus fruit season there are about

25 or 30 cars of citrus fruit at Potomac Yard at one time, which may be sent to any destination the shipper desires. In order to secure the best market shippers frequently reassign the shipments four or five times. Shipments are frequently reassigned at Waycross, Ga., and again at Potomac Yard. All of the shipments were reassigned at Potomac Yard. A number of the cars stood there six or seven days pending reassignment. Twelve of the shipments had previously been reassigned at Waycross. The chief reason for complainant's desire for refrigerator cars is its fear that its shipments may be frozen, and the chief cause of this apprehension is complainant's uncertainty relative to the ultimate destinations of its shipments. Defendants suggest that when complainant desires to reassign from Potomac Yard to points where the movement involves danger of freezing, transfers to refrigerator cars may be avoided by the selection of shipments already loaded in refrigerator cars and standing at Potomac Yard. The record indicates that latterly this has been done. During the season of 1913-14 complainant shipped something like 3,000 cars through Potomac Yard, and despite complaint of a shortage of refrigerator cars none of the shipments appears to have been transferred.

We are not prepared to say that the provisions of the act are broad enough to require the furnishing of refrigerator cars regardless of the ultimate destination of shipments and the real necessities of the traffic. Nor can we find on this record that ventilator cars are not safe and suitable for all of the ordinary demands of the citrus fruit traffic. The transfer involved under the conditions disclosed is in the nature of an added special service, for which defendants may justly impose a reasonable charge against the shipper, and with respect to the shipments involved was rendered at complainant's request. We find that defendants have justified the imposition of the charge assailed, and an order will be entered dismissing the complaint.

No. 8092.

KNOXVILLE OVERALL COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

PORTION OF FOURTH SECTION APPLICATION No. 1952.

Submitted December 13, 1915. Decided May 2, 1916.

1. Rate of 48 cents charged for the transportation of less-than-carload shipments of cotton denims from Canton, Ga., to Knoxville, Tenn., found unreasonable to the extent that it exceeded a rate of 39 cents. Reparation awarded.
2. Defendant's fourth section application for authority to continue a rate for the transportation of cotton denims from Atlanta, Ga., to Knoxville, Tenn., lower than the rates contemporaneously maintained on like traffic from Canton, Ga., and other intermediate points, denied.

John Bowman for complainant.

William Burger for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of overalls, with its principal place of business at Knoxville, Tenn. By complaint, filed June 21, 1915, it alleges that the rate of 48 cents per 100 pounds charged by defendant for the transportation of 43 less-than-carload shipments of cotton denims from Canton, Ga., to Knoxville, during the period from February, 1913, to July, 1914, was unreasonable, unjustly discriminatory, and in violation of the fourth section of the act to the extent that it exceeded a rate of 39 cents contemporaneously in effect to Knoxville from Atlanta, Ga., from which Canton is intermediate by way of defendant's old line. Reparation is asked. The claim was presented to the Commission informally January 30, 1915. Rates are stated in cents per 100 pounds.

The southern classification includes cotton denims in the term "cotton piece goods not otherwise indexed by name" and rates them fourth class. Exceptions to the classification applicable between Georgia and Tennessee points on the Louisville & Nashville Railroad provide a third-class rating on cotton fabrics including cotton

denims. The shipments involved were charged for at the third-class rate of 48 cents. A commodity rate of 39 cents took effect September 11, 1915, which is satisfactory to complainant, so that only the question of reparation remains.

Complainant submitted elaborate rate comparisons, of which the following are representative:

	Distance.	Rate per 100 pounds.	Ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Canton to Knoxville.....	199	¹ 48.0	4.824
Do	199	² 39.0	3.919
Canton to Nashville, Tenn.....	288	36.0	2.500
Canton to Cincinnati, Ohio.....	474	49.0	2.068
Atlanta, Ga., to Knoxville.....	195	39.0	4.000
Aragon, Ga., to Knoxville.....	210	39.0	3.714
Spelgener, Ala., to Knoxville.....	442	47.0	2.127

¹ Rate charged.

² Present rate.

A majority of the rates cited by complainant are for two-line hauls. A rate of 41 cents per 100 pounds applies from many points in Georgia to Knoxville for distances ranging from 235 miles to 336 miles, by way of defendant's line in connection with one or more other carriers. Various rates are cited by defendant, mostly in territories other than the territory involved. A rate of 50 cents applied from Atlanta, Ga., to Athens, Tenn., 151 miles; from Cedartown, Ga., to Athens, Tenn., 112 miles; from Cedartown, Ga., to Englewood, Tenn., 120 miles. A rate of 54 cents applies from Atlanta, Ga., to Marysville, Tenn., 186 miles.

No evidence was adduced in support of the allegation of unjust discrimination.

That portion of defendant's Fourth Section Application No. 1952 which asks authority to continue rates on cotton denims from Atlanta, Ga., to Knoxville, Tenn., lower than the rates contemporaneously maintained on like traffic from Canton and other intermediate points was heard with the complaint. Canton is 44 miles north of Atlanta on defendant's so-called old line branch which diverges from the main line at Marietta, Ga., and converges at Etowah, Tenn. Transportation difficulties render it impracticable to transport shipments to Knoxville from Atlanta through Canton or to transport shipments from Canton to Knoxville northward over the old line. Shipments from Canton to Knoxville are moved southward 24 miles, to Marietta, and thence northward over defendant's main line, a total distance of 199 miles. It follows that in this there was or is no departure from the long-and-short-haul rule of the fourth section. The rates on denims to Knoxville from stations Fairy, Ga., to Bolton, Ga., range from 41 cents to 54 cents. Traffic from Atlanta to Knox-

ville passes through these points. Defendant states that the rate from Atlanta to Knoxville is depressed by the competition of other carriers, although the extent of the competition is not disclosed, and it is not shown that the rate from Atlanta is less than a reasonable rate. The adjustment asked has not been justified and defendant's application for leave to continue it will be denied.

We find that the rate assailed was and for the future will be unreasonable to the extent that it exceeded or may exceed the present rate of 39 cents per 100 pounds, which we find reasonable; that the shipments were made as alleged; that complainant paid and bore charges thereon at the rate herein found to have been unreasonable; and that it is entitled to reparation with interest. The exact amount of the reparation can not be determined on the present record. Complainant accordingly should prepare a statement showing as to each shipment on which reparation is claimed the date of shipment, weight, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared by complainant and verified by defendant we will consider further issuing an order awarding reparation.

Appropriate orders will be entered.

39 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 747.

FISH TO NEW YORK, N. Y.

Submitted March 17, 1916. Decided May 9, 1916.

Proposed increased rate for the transportation of fresh or frozen fish in less than carloads from Provincetown, East Brewster, and North Truro, Mass., to Harlem River, N. Y., justified.

S. S. Perry for New York, New Haven & Hartford Railroad Company.

No appearance for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect December 1, 1915, the New York, New Haven & Hartford Railroad Company, hereinafter termed the respondent, proposed increased rates on fresh or frozen fish in less than carloads from Provincetown, East Brewster, and North Truro, Mass., to Harlem River, N. Y., by way of Boston, Mass. Upon protest filed by the New York Fish Company of New York, N. Y., the schedules were suspended until March 30, 1916, and later until September 30, 1916.

Provincetown, East Brewster, and North Truro are on the Cape Cod extension of respondent's line. Fish freezers are located at all three points. Three routes are available for the traffic to Harlem River: A rail route through Boston, 327 miles; a rail route through Middleboro, Taunton, and Providence, R. I., 299 miles; a rail-and-water route by way of Fall River, Mass., in connection with the New England Steamship Company, 280 miles.

The present rate from Provincetown through Boston to Harlem River is a commodity rate of 37 cents per 100 pounds. A rate of 25 cents applies to Boston and a rate of 25 cents beyond. A through rate of 45 cents is proposed and intermediate rates that would aggregate 55 cents. A through rate of 35 cents applies by way of Middleboro, Taunton, and Providence, which is the direct route, and also by the route through Fall River to New York City points. The rates from Provincetown are typical.

Boston is an important fish market, and respondent states that while the route through Boston is not the most direct route, fish shippers prefer it because it affords them the advantage of markets

and enables them to dispose of their shipments at Boston if the market conditions are better there than at New York. Special fish trains are provided for the movement of fish from Provincetown which are scheduled to arrive at Boston about 4 o'clock in the morning. A fast train called the "Centennial" is operated from Boston, which is scheduled to leave at 5.55 p. m. and to arrive at Harlem River at 1.15 the next morning. This is expedited service and is said to have been inaugurated primarily to take care of the fish traffic out of Boston. Other Boston traffic is carried on this train, but the greater part of the tonnage consists of fish. Respondent also operates slower freight trains from Boston to New York which leave later than the Centennial. There is no through service to Harlem River by way of Middlesboro, Taunton, and Providence. The rate by this route is cheaper than the rate by way of Boston, but the service is said to be not as good. Trains taking this route do not reach Providence in time to connect with the Centennial train for Harlem River.

The route designated in the tariff under suspension is not intended to restrict the movement of fish from Boston to New York to the Centennial train. Two alternative routes are open to shippers of fish from Provincetown to Harlem River by which lower rates apply than the proposed rate by way of Boston. The Boston route is longer, and in view of the special and expedited service provided by respondent for the movement of fish over it the proposed rate does not appear to be unreasonable.

We find that respondent has justified the increased rate proposed, and our order suspending it will be vacated.

39 I. C. C.

No. 5803.

JAMES S. TEMPLETON & SONS

v.

CHICAGO, INDIANA & SOUTHERN RAILROAD COMPANY
ET AL.

Submitted August 25, 1915. Decided May 9, 1916.

Certain carloads of wheat shipped from South Chicago, Ill., to Louisville, Ky., there milled and reshipped as products to points in Virginia, found, upon rehearing, to have been overcharged. Refund directed.

J. S. Brown for complainant.

Morell Law for Chesapeake & Ohio Railway Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

We found in our original report herein, unreported, that the charges collected for the transportation of seven carloads of wheat shipped from Chicago, Ill., to Louisville, Ky., there milled and reshipped as products to points in Virginia, were not unreasonable, and dismissed the complaint. The shipments moved from South Chicago, which is within the Chicago switching limits, to Louisville, by way of the Chicago, Indiana & Southern Railroad and the Cleveland, Cincinnati, Chicago & St. Louis Railway, at a rate of 8 cents per 100 pounds, and from Louisville to Norfolk, Richmond, and other points in Virginia, by way of the Chesapeake & Ohio Railway, at a rate of 14.5 cents per 100 pounds. The case was reopened upon complainant's petition. A further hearing has been had and the case is before us on the whole record.

Complainants now contend that Chesapeake & Ohio Railway tariff I. C. C. No. 4928, in effect at the time of movement, and which carried a net rate of 10 cents per 100 pounds from Louisville to the points of destination, was legally applicable to the shipments. The provisions of the tariff referred to upon which complainant relies are as follows:

RULE 1. On shipments of grain originating at points north of the north bank of the Ohio River and east of the Mississippi River (except East St. Louis, Ill., and Evansville, Ind., also excepting points of origin specifically covered by other milling-in-transit tariffs effective at Louisville, Ky., issued by the Chesapeake & Ohio Railway Company and lawfully on file with the Inter-

state Commerce Commission) drawn into Louisville by rail, there milled, and the product shipped via the Chesapeake & Ohio Railway Company within six months after the date of the original paid expense bill covering the grain inbound, this company will apply to such milled product of grain a rate of 11 cents per 100 pounds, carloads, from Louisville, Ky., to Virginia cities as named in rule 9, and points taking the same rates. * * *

RULE 2. Out of the rate named herein 1 cent per 100 pounds bridge toll will be refunded to the Louisville, Ky., miller, where the inbound shipments of grain are handled via Jeffersonville or New Albany, Ind. * * *

Rule 1 prohibits the application of this tariff to shipments from points of origin specifically covered by other milling-in-transit tariffs effective at Louisville, issued by the Chesapeake & Ohio Railway and legally on file with the Commission. Chesapeake & Ohio Railway tariff I. C. C. No. 5012 provides transit at Louisville on "corn and wheat in carloads, shipped by way of the Cleveland, Cincinnati, Chicago & St. Louis Railway from Chicago, Ill., * * *." The cars were shipped from South Chicago and by way of the Chicago, Indiana & Southern Railroad and were not affected by the tariff last mentioned. South Chicago, the shipping point, is within the territory described in I. C. C. No. 4928 and is not specifically covered by other milling-in-transit tariffs effective at Louisville. It follows that the provisions of Chesapeake & Ohio Railway tariff I. C. C. No. 4928 were and are applicable.

We find that the charges beyond Louisville collected on the shipments involved in excess of those which would have accrued under the provisions of Chesapeake & Ohio Railway tariff I. C. C. No. 4928 were without legal authority and should promptly be refunded by the Chesapeake & Ohio Railway.

The case will be held open until we shall have been advised that settlement has been made.

30 I. C. C.

No. 6109.¹

MEEDS LUMBER COMPANY

v.

ALABAMA CENTRAL RAILWAY ET AL.

Submitted January 17, 1916. Decided May 9, 1916.

Original decision denying retroactive effect to transit arrangements on lumber at Columbus, Miss., and Reform, Ala., the absence of which arrangements was not found unreasonable or unjustly discriminatory, affirmed on rehearing. Complaints dismissed.

A. L. Sidebottom and William N. Webb for complainant.

R. Walton Moore and Edward H. Hart for Mobile & Ohio Railroad Company and Illinois Central Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

The complaint in No. 6109 alleged that the defendants charged unjust and unreasonable rates for the transportation of three carloads of lumber from Forrester, Ala., which were dressed in transit at complainant's direction at Columbus, Miss., and reshipped to Bradley, Ill., Chicago, Ill., and Milwaukee, Wis., respectively. Charges had been collected at the ultimate destinations on the basis of the rates applicable to and from Columbus, for the reason that the defendants' tariffs did not provide for dressing in transit at Columbus on any other basis. Our findings in our original report, unreported, were as follows:

At the time the shipments moved the Mobile & Ohio Railway tariffs provided that lumber originating at stations on the Alabama Central Railway might be dressed in transit at Tuscaloosa, Ala., a point on the Mobile & Ohio, 60 miles nearer the junction of that line with the Alabama Central Railway than is Columbus. Had the shipper directed that these cars be dressed in transit at Tuscaloosa instead of Columbus, the extra charges of which complaint is now made would not have been incurred.

There is no proof that any factor of the through rate applied on these shipments is or was unreasonable, and there is no explanation of complainant's failure to avail itself of the transit privilege accorded at Tuscaloosa. The Mobile & Ohio has offered to establish the transit privilege at Columbus and to pay complainant the difference between the charges it paid and those which it would have paid had such an arrangement been in effect when the shipments in

¹ The proceeding also embraces complaint in No. 7207, *Same v. Same*.

question moved. The Commission will not, however, sanction the retroactive application of transit privileges, except upon a showing of unreasonableness or of damage arising out of undue prejudice or discrimination. Such a showing has not been made upon this record. All stations on the Alabama Central Railway were at that time in the same situation as Forrester in this respect. Neither is there any evidence of undue preference of points on other lines that worked to the undue prejudice and disadvantage of Forrester, its traffic or shippers.

Upon the record before us we are constrained, as we have been in other cases involving without proof of undue discrimination, the retroactive application of a transit privilege, to dismiss the complaint.

The complaint in No. 7207 alleged that the defendants charged an unjust and unreasonable rate for the transportation of a carload of lumber from Forrester to Chicago, which was dressed in transit at complainant's direction at Reform, Ala. Charges had been collected at Chicago on the basis of the rates applicable to and from Reform for the reason that the defendants' tariffs did not provide for dressing in transit at Reform on any other basis. The parties in interest agreed to submit the case upon the record made in No. 6109 and waived the right to adduce any other evidence. An order dismissing the complaint was entered, following similar action in No. 6109.

Complainant subsequently, December 19, 1914, filed a petition for rehearing in No. 6109 and for hearing in No. 7207. The petition was granted, and the rehearing and hearing asked were had on November 24, 1915. But the only new fact of consequence developed is that when some, if not all, of the shipments moved, it was impossible to have the lumber dressed in transit at Tuscaloosa because an embargo had been laid at that point on account of the congestion of cars at the Tuscaloosa plant. The defendants were not at all responsible for the congestion or the necessity for the embargo.

We find nothing in the entire record as now made to justify any modification of our original findings, and the complaints accordingly will be dismissed.

No. 6399.
LEHIGH VALLEY COAL SALES COMPANY
v.
LEHIGH VALLEY RAILROAD COMPANY.

Submitted July 15, 1914. Decided May 9, 1916.

Reparation on account of services performed by complainant in connection with the transfer of interstate shipments of coal from open cars to box cars at Buffalo, N. Y., denied.

Nicholas W. Hacker for complainant.
Stewart C. Pratt for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the wholesale coal business, with its principal office at New York, N. Y. By complaint filed December 5, 1913, it alleges that defendant's failure to furnish box cars for the transportation of numerous shipments of anthracite coal from points on defendant's line in Pennsylvania to points beyond Buffalo, N. Y., and to Canadian points, compelled complainant, at its own expense, to transfer coal from open cars to box cars at Buffalo, and subjected complainant to unreasonable charges in the sum of \$9,306.49. Reparation is asked.

The shipments specified in the complaint consisted of 1,304 carloads of coal, aggregating 49,253.21 gross tons, that were received from day to day at complainant's storage plant near Buffalo during December, 1912, and January, 1913. Complainant ordered box cars for the shipments, but defendant's lines were short of box cars and an arrangement was made that the shipments should be transported to complainant's storage yard near Buffalo in open cars, where complainant should transfer them to box cars, defendant to pay complainant for the transfer service. Complainant had special facilities for doing the work and performed it as agreed. Defendant refused to pay the bill subsequently rendered on the ground that its tariffs did not authorize payment for such services. Complainant submits itemized statements showing the cost of transferring the shipments and the loss sustained by the degradation of the coal through its transfer. The combined transfer cost and loss is placed at \$9,306.49.

A witness for complainant testified that it has long been the custom to forward anthracite coal to points beyond Buffalo and to Canadian points in box cars; that box-car delivery has been specified by complainant's customers; that many of the plants to which the shipments involved were consigned were not equipped to unload coal from open coal cars and that some of the shipments doubtless would have been refused if they had been tendered at destinations in open cars. Effective January 23, 1914, defendant published an allowance of 15 cents per ton of 2,240 pounds on anthracite coal transferred by shippers from coal cars to box cars for defendant's convenience, which allowance is still in effect. Defendant expresses willingness to make refund to complainant on this basis.

Section 15 of the act provides:

If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable.

Although Canadian and western coal consumers may prefer its shipment in box cars, that custom does not make transfer from car to car transportation. The transfer herein involved was primarily for the commercial convenience of complainant and not a transportation service which defendant was required by the act to provide and furnish upon reasonable request therefor. The fact that defendant promised to reimburse complainant for the service the latter performed in the transfer of the coal from car to car and that defendant did provide an allowance of 15 cents per gross ton subsequently to such transfer do not, of course, constrain the Commission to find the allowance to be for a transportation service for which defendant may make an allowance.

From the facts of record it does not appear that the transfer of this coal from coal cars to box cars was a service of transportation which defendant was required to perform and for the performance of which by the owner defendant could lawfully pay an allowance. Manifestly, the Commission may afford relief only within the confines of the provisions of the law, no violation of which has here been proved. The complaint must be dismissed, and it will be so ordered.

39 I. C. C.

No. 6782.
WEST SALEM CANNING COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos.
2188 AND 2741.

Submitted November 6, 1915. Decided May 9, 1916.

1. Rate charged on canned peas, in packages, in carloads, from West Salem, Wis., to St. Paul and Minneapolis, Minn., found unreasonable and unjustly discriminatory to the extent that it exceeded 18 cents per 100 pounds. Reparation awarded.
2. Defendants authorized to continue rates on canned peas in packages, in carloads, from La Crosse, Wis., to St. Paul which are lower than those contemporaneously maintained from West Salem and intermediate points, provided the present rates from the intermediate points are not exceeded and that the rates from said intermediate points do not exceed the lowest combination.

J. E. Higbee for complainant.

A. F. Cleveland for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in canning peas at West Salem, Wis. By complaint, filed March 30, 1914, it alleges that the rates charged by defendants for the transportation of numerous carloads of canned peas, shipped during 1912 and 1913 from West Salem to St. Paul, Minn., were unreasonable and unjustly discriminatory in comparison with lower rates contemporaneously maintained by defendants on the same commodities to St. Paul from La Crosse, Bangor, and Sparta, Wis. Reparation is asked. Those portions of Chicago & North Western Railway's Fourth Section Applications Nos. 2188 and 2741 in which authority is asked to continue rates on canned peas in carloads from La Crosse to St. Paul which are lower than the rates contemporaneously applicable on like traffic from West Salem and other intermediate points were heard with the complaint. Rates herein are stated in cents per 100 pounds.

The shipments aggregated 1,037,637 pounds and moved: Chicago & North Western Railway, hereinafter called the North Western, to either Elroy or Wyeville, Wis.; Chicago, St. Paul, Minneapolis & Omaha Railway thence to destinations. Charges were collected at the fifth-class rate of 20 cents. Some of the shipments moved to Minneapolis, Minn., but the rates to Minneapolis and St. Paul were and are the same, and both points are hereinafter called St. Paul.

West Salem, Bangor, and Sparta are located on the line of the North Western that extends northwest from Elroy, which has a branch extending from Medary Junction, Wis., just west of West Salem, to La Crosse. Bangor and Sparta are east of West Salem, and traffic from La Crosse to St. Paul by way of defendants' lines passes through West Salem, Bangor, and Sparta.

There were and are no carload commodity rates on canned peas in packages from the points named to St. Paul. The western classification rating of canned peas, in packages, in carloads, is fifth class, minimum 36,000 pounds. Defendants' fifth-class rates at the time the shipments moved were: 12.5 cents from La Crosse, 20 cents from West Salem, and 18 cents from Bangor and Sparta. The present rates are 13.4 cents from La Crosse and 18 cents from West Salem, Bangor, and Sparta. The increase in the rate from La Crosse was effected January 11, 1915, and the reduction from West Salem on November 17, 1913. Substantially the same relative adjustment exists with respect to defendants' rates on all class traffic from these points.

The Chicago, Milwaukee & St. Paul Railway and the Chicago, Burlington & Quincy Railroad, hereinafter called the Milwaukee and the Burlington, respectively, have their own rails from La Crosse to St. Paul. The Milwaukee also serves West Salem, Bangor, and Sparta and by way of its line La Crosse is intermediate to St. Paul from the Wisconsin points named in the complaint. The Milwaukee's fifth-class rate from West Salem when the shipments moved was 18 cents. Except during the period when the fifth-class rates from West Salem were different, the class rates from that point to St. Paul have generally been the same by either of the lines available. St. Paul is 142 miles from West Salem by the Milwaukee and 207 miles by defendants' lines; 131 miles from La Crosse by the Milwaukee, 133 miles by the Burlington, and 218 miles by defendants' lines. The mileage from La Crosse by way of defendants' lines, therefore, exceeds the short-line mileage by 66 per cent. Defendants state that the rates from these points have been made by the short lines for their one-line hauls and defendants have merely met the rates so established. The Milwaukee's service is said, moreover, to be main-line service, while the bad grades encountered over the North

Western's line to Elroy and Wyeville compel the operation of this line more or less as a branch. Water competition on the Mississippi River between La Crosse and St. Paul also is assigned as a reason for the lower scale of rates at La Crosse.

We find that the North Western should be authorized to continue rates on canned peas, in packages, in carloads, from La Crosse to St. Paul and St. Paul rate points which are lower than those contemporaneously maintained from West Salem and intermediate points, provided the present rates from the intermediate points are not exceeded, and provided further that the rates from said intermediate points do not exceed the lowest combination.

Complainant also shows that there is a competitive canning factory at Onalaska, Wis., and cites the rates from that point to St. Paul. Onalaska is just north of La Crosse and is said to be practically in the La Crosse switching district. It is served by the North Western, the Burlington, and, through switching arrangements, by the Milwaukee. Onalaska is not intermediate from La Crosse to St. Paul over the North Western, but is over the Burlington. West Salem is intermediate from Onalaska to St. Paul over the North Western just as it is intermediate to St. Paul from La Crosse, but is not intermediate from Onalaska over the Burlington. The Burlington applied the La Crosse rate as a maximum at Onalaska, and the North Western maintained the same rate.

We find that the adjustment of the rates from Onalaska may not be considered as differing materially from the adjustment of rates from La Crosse.

A rate of 18 cents was available to complainant over the Milwaukee. Complainant states, however, that its plant was connected with the North Western's tracks by a private switch and that the Milwaukee's tracks could be reached only by draying the shipments to its freight depot. Complainant adduced no evidence that the rate was intrinsically unreasonable. But the group basis has been observed in making these rates and it is stated by defendants' witness that 18 cents is and would have been a reasonable fifth-class rate from the points from which it now applies and would have been the proper rate; that it was made 20 cents from West Salem by mistake and was reduced to the present rate as soon as defendants' attention was called to the error. Defendants have long undertaken to meet the rates of the short lines from the points noted and presumably have found the short lines' rates remunerative. A local rate of 6 cents applied at the time of movement from West Salem to La Crosse and the combination on La Crosse, involving a back-haul movement, was 18½ cents, or only one-half cent over the present joint rate.

We find that the rate charged was unreasonable and unjustly discriminatory to the extent that it exceeded the present rate of 18 cents per 100 pounds which we find reasonable; that complainant made the shipments as described and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation with interest on all the shipments delivered within two years prior to the filing of the complaint.

The exact amount of reparation due can not be determined on the present record. Complainant accordingly should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, points of origin and destination, weight, car number and initials, route, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants, we will consider the entry of an order awarding reparation. As the rate upon the basis of which reparation is here awarded has been in effect for more than two years, no order for the future will be made. An appropriate fourth section order will be entered.

39 I. C. C.

No. 6636.

UTAH WHOLESALE GROCERY COMPANY
v.
NORFOLK & WESTERN RAILWAY COMPANY ET AL.

Submitted November 30, 1915. Decided May 9, 1916.

Rate charged for the transportation of a carload of peanuts from Suffolk, Va., to Provo, Utah, not found to have been unreasonable or unjustly discriminatory. Complaint dismissed.

Jacob Evans for complainant.

H. A. Scandrett and *J. V. Lyle* for Union Pacific Railroad Company and Oregon Short Line Railroad Company.

Dana T. Smith for San Pedro, Los Angeles & Salt Lake Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale grocery business at Provo, Utah. By complaint, filed February 19, 1914, it alleges that the rate charged by defendants for the transportation of a carload of peanuts in June, 1912, from Norfolk, Va., to Provo was unreasonable and unjustly discriminatory. Reparation is asked.

The shipment weighed 24,035 pounds and was shipped June 10, 1912, from Suffolk, Va., routed by the complainant over defendants' lines, with the San Pedro, Los Angeles & Salt Lake Railroad Company as the delivering carrier. No joint rate was applicable over this route, and charges were collected in the sum of \$372.54 at a combination rate of \$1.55 per 100 pounds, composed of a rate of 39 cents per 100 pounds from Suffolk to Mississippi River crossings and a rate of \$1.16 thence to destination. Provo is also served by the Denver & Rio Grande Railroad, and at the time the shipment moved a joint rate of \$1.35 per 100 pounds was in effect on this traffic from Suffolk to Provo, in which the Denver & Rio Grande and all of the defendants except the San Pedro, Los Angeles & Salt Lake Railroad Company participated. Prior to May 31, 1909, the San Pedro, Los Angeles & Salt Lake Railroad had been named in the tariff as a participating carrier also, but was not lawfully a party to the rate after

that date. Effective January 27, 1913, the \$1.35 rate was canceled, leaving the combination rate of \$1.55 per 100 pounds based on Mississippi River crossings by all routes. The present rate is not assailed.

Prior to making the shipment complainant was advised by the agent of the San Pedro, Los Angeles & Salt Lake Railroad that the \$1.35 rate was applicable over its line. Because of this and the application of the \$1.35 rate over another route, and its previous application over the route of movement, complainant contends that the rate charged was unreasonable and unjustly discriminatory to the extent that it exceeded \$1.35. Some of the defendants expressed willingness to make reparation on that basis.

The misquotation of a rate affords no basis for an award of reparation, *Poor Grain Co. v. C., B. & Q. Ry. Co.*, 12 I. C. C., 418, and neither the application of a lower rate over another route nor the former application of a lower rate over the route of movement of itself affords any basis for holding that the rate charged was unreasonable or unjustly discriminatory.

The complaint must be dismissed, and it will be so ordered.

39 I. C. C.

No. 6872.
SPROUSE & SON
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted November 16, 1915. Decided May 9, 1916.

Charges collected for the transportation of mechanically burnt pyrographic wooden novelties from New Chicago, Ind., to Tacoma, Wash., found to have been unreasonable to the extent that they exceeded the charges that would have accrued at one and one-half times the first-class rate. Reparation awarded.

Jay W. McCune for complainant.

H. E. Still for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged as a wholesale dealer in notions at Tacoma, Wash. By complaint, filed May 7, 1914, it alleges that the rates charged by defendants on five less-than-carload shipments of pyrographic wooden novelties shipped in May and November, 1913, from New Chicago, Ind., to Tacoma, were unreasonable to the extent that they exceeded a rate of \$2 per 100 pounds. Reparation is asked.

The shipment in May consisted of samples of wooden pipe and tie racks, and small wooden boxes for gloves and ties. It weighed 100 pounds. The samples were billed as "pyro novelties" and charges were collected on the basis of the first-class rate of \$3.50 per 100 pounds applicable to "notions." The shipments in November consisted of four less-than-carload lots of the same kinds of articles, aggregating 7,075 pounds, billed as "burnt wood novelties." Charges were collected at the double first-class rate applicable to wooden boxes. All the articles were pyrographic wooden novelties which were unrated by the western classification, which governed.

All the articles were constructed of inferior wood and the designs on them were burnt on mechanically by means of heated dies. They were packed in crates holding a gross weighing 70 pounds and were valued at \$7.84 per gross. At the first-class rate between the points involved the freight charges amount to 31.3 per cent of the value of the articles, and at double the first-class rate to 62.5 per cent of the

value. Commodity rates ranging from \$2 to \$2.75 per 100 pounds applied contemporaneously from the same territory of origin to Pacific coast terminals on wooden pencil boxes, salt boxes, backgammon boards, knife boxes, sieves, and toy trunks are cited in comparison, which rates amount to from 10 per cent to 29.4 per cent of the value of the articles to which they apply. Many of these articles move in larger volume than complainant's novelties, which are salable only during the Christmas season and move seasonally. A double first-class rate applies on pyrography boxes, plain, stamped, or stenciled, but not burnt, but such boxes usually are made of more valuable wood than complainant's articles.

We find that the rate assailed on mechanically burnt pyrographic wooden novelties was and for the future will be unreasonable to the extent that it exceeded or may exceed one and one-half times the first-class rate from and to the same points. We further find that complainant made the shipments involved as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that it was damaged in the sum of \$122.06, and that it is entitled to reparation in that amount, with interest from December 17, 1913. In fixing the amount of reparation we have taken into account the fact that the rate charged on the shipment in May was less than the rate herein found reasonable.

An appropriate order will be entered.

39 I. C. C.

No. 7546.

UNION SULPHUR COMPANY ET AL.

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

PART OF FOURTH SECTION APPLICATION No. 1772.

Submitted May 6, 1915. Decided May 9, 1916.

1. Increased rates on crude sulphur and brimstone from Atlantic ports to points in central freight association territory found justified.
2. That portion of Fourth Section Application No. 1772 for authority to continue rates on brimstone and crude sulphur from Baltimore, Md., to Cheboygan, Mich., which are lower than the rates contemporaneously applicable on like traffic to Alpena, Mich., and other intermediate points on the Detroit & Mackinac Railway, denied.

George Patterson Boyle for complainants.

Henry Wolf Biklé for Pennsylvania Railroad Company and affiliated lines.

William C. Coleman and *H. R. Lewis* for Baltimore & Ohio Railroad Company and affiliated lines.

M. B. Pierce for Erie Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The principal complainant in this case is the Union Sulphur Company, a corporation engaged in the mining of brimstone and sulphur, with its principal office at New York, N. Y. The other complainants are corporations engaged in the manufacture of chemicals, powder, and paper. By complaint, filed December 12, 1914, they allege (1) that defendants have increased the rates on brimstone and sulphur, hereinafter collectively called sulphur, destined from north Atlantic ports to points in central freight association and other territories and that the increased rates are unreasonable and unjustly discriminatory; (2) that the long-and-short-haul rule of the fourth section is violated in that the rate on sulphur from Baltimore, Md., to Alpena, Mich., is higher than the rate to Cheboygan, Mich., Alpena being intermediate to Cheboygan from Baltimore. Reparation is asked on shipments which moved at the increased rates.

The traffic originates at mines operated by complainants in Louisiana and reaches Baltimore and other Atlantic ports in

vessels operated by complainants. Most of it moves through Baltimore. Prior to December 1, 1914, the general basis of rates on sulphur, both imported and domestic, from Atlantic ports to central freight association territory was 16 cents per 100 pounds from New York to Chicago with the usual differential adjustment from Philadelphia and Baltimore, which made the rate from Baltimore 13 cents. Prior to 1904 the 16-cent rate from New York to Chicago applied only on imported sulphur, having been established to meet the rates from other ports on sulphur imported from Sicily. But in 1904 it was made applicable to domestic traffic in order to draw to Atlantic ports Louisiana sulphur, which was moving to the destination territories all rail. Effective December 1, 1914, defendants increased the 16-cent basic rate from New York to Chicago to 20 cents, thereby increasing the rate from Baltimore to Chicago to 17 cents. These increased rates were established subsequent to January, 1910, and it is incumbent upon defendants to prove them just and reasonable. That portion of defendants' Fourth Section Application No. 1772 by which authority is sought to continue rates on brimstone and crude sulphur from Baltimore, Md., to Cheboygan, Mich., which are lower than the rates contemporaneously maintained on like traffic to Alpena and other intermediate points on the Detroit & Mackinac Railway was heard with the complaint.

Crude sulphur may be put to some 30 or 40 uses, but is used principally in the manufacture of sulphuric acid, which in turn is used to reduce wood to pulp for the manufacture of paper. It is also used in the manufacture of explosives and various chemicals. The mines of the Union Sulphur Company are located at Sulphur Mine, La., a point 79 miles distant from the loading port whence complainants' vessels ply to north Atlantic ports. The vessels' cargoes are delivered to the rail carriers at the ports for reshipment to consumers in central freight association territory and adjacent territories. The shipments are sold either on consignment or ex vessel. The unloading at the Baltimore & Ohio Railroad's Locust Point marine terminals near Baltimore is done by the carrier from the end of the ship's tackle into storage bins or cars as the shipment may require. Storage is accorded by Baltimore & Ohio Railroad tariff I. C. C. No. 12873, which provides as follows:

When necessary to prevent delay in unloading of vessels, and provided storage space is available, property in bulk, or in packages, except bulk grain, will be held free of storage, when in transit, awaiting reshipment via the Baltimore & Ohio Railroad, and subject to a charge of 8 cents per ton of 2,240 pounds if ordered out via other lines. Owing to limited storage facilities, shippers must make arrangements with this company prior to the unloading of property, in order to avail themselves of this privilege.

Defendants state that the increased rates were published pursuant to suggestion made in *The Five Per Cent Case*, 31 I. C. C., 351.

The rates on sulphur were increased along with the rates on other commodities as part of a general scheme to eliminate as far as possible so-called unremunerative rates. Illustrative increases in the New York-Chicago rates for other commodities were: Limestone, 13 cents to 20 cents; marble dust, 17 cents to 20 cents; gravel, 18 cents to 20 cents; sand, 17 cents to 17.9 cents; spelter, 17.5 cents to 19 cents. The volume of the movement of these other commodities is not shown.

The 20-cent rate from New York to Chicago was chosen as a reasonable charge because it was 5 cents below the lowest class rate from New York to Chicago and would yield less than 5 mills per ton-mile. Only a few commodities take rates from New York to Chicago that are less than 20 cents per 100 pounds: Import clay, on which the rate was raised from \$3.20 per ton to \$3.40; import magnesite, magnesite ore, and carbon slack, on which the rates were raised from 17 cents to 19 cents per 100 pounds; and imported pyrites, on which the rate was raised from \$3.80 per gross ton to \$4.

Various disturbances in Sicily, which is the principal sulphur field of Europe, have cut down the import sulphur traffic so much that imported sulphur now is almost a negligible factor in the American market. Only 2,500 tons of sulphur were brought to this country from Europe during 1914. Complainants' business through Baltimore alone amounts to about 30,000 tons per year, and complainant Union Sulphur Company produces more than one-half of all the sulphur consumed in the United States to-day.

Domestic sulphur encounters practically no competition except from iron pyrites, which has been substituted for sulphur in the manufacture of sulphuric acid by a number of plants. Domestic sulphur contains a much greater percentage of pure sulphur, but iron pyrites yields relatively more sulphuric acid. Iron pyrites is worth about \$6 per gross ton, f. o. b. Baltimore, while crude sulphur is worth about \$22.50 per gross ton. Pyrites is sold on a sulphur unit basis, the price varying with the percentage of sulphur which it contains. The difference in cost, together with cheap ocean rates on pyrites from Spain and other fields of production abroad, account for the substitution of iron pyrites for sulphur. The present rate on imported iron pyrites from New York to Chicago is \$4 per gross ton, or 17.9 cents per 100 pounds; 15.2 cents per 100 pounds from Baltimore. Sulphur must be transported in tight box cars, while pyrites may be handled in open gondola or coal cars. The average loading of sulphur appears to be about 60,000 pounds per car, while pyrites loads to over 80,000 pounds.

Most of the sulphur shipments are moved out of Baltimore by the Baltimore & Ohio Railroad, which earns an average of about 5.6 mills per ton-mile on all freight, including coal and less-than-carload freight, for an average haul of 193.5 miles. The earnings on all freight except coal average 7.25 mills per ton-mile. The sulphur shipments are hauled an average distance of between 600 miles and 700 miles. Carload shipments out of the last cargo of sulphur to Baltimore before the increased rates took effect moved from Baltimore an average distance of 761 miles and earned an average of 3.1 mills per ton-mile. Shipments out of the first cargo delivered at Baltimore after the increased rates took effect moved an average distance of 584 miles and earned 4.18 mills per ton-mile. The car-mile earnings under the former rates averaged about 10.2 cents and under the increased rate about 13.1 cents. Complainant shows, however, that most of this traffic earns on an average about 14 cents per car-mile, ranging from 18.9 cents for 320 miles to Vandergrift, Pa., to 12.6 cents for 1,058 miles to Rhinelander, Wis. Defendants regard any earnings less than 5 mills per ton-mile or 14 cents per car-mile unduly low, regardless of distance.

Complainants state that cargoes of sulphur are sometimes discharged at the pier in Baltimore at the rate of 35 carloads a day. Complainants have been and still are willing to pay a reasonable charge for storage, defendants having imposed no charge because of their desire not to incur certain legal liabilities as warehousemen and because of competitive conditions at Virginia ports. The 20-cent rate basis from New York to Chicago is said by complainants to have been fixed arbitrarily and without relation to any class rate, and defendants admit that it was fixed somewhat intuitively and without any exhaustive investigation with respect to rates on sulphur. It was also admitted that box cars would be available for return loading, which is not true usually of open cars. Complainants object to any consideration of the value of sulphur because few loss and damage claims are filed. They desire the former rates plus 5 per cent. Low rates are said to be fitting for sulphur because sulphur is a raw material that loads heavily and moves in large volume.

No justification appears for the fourth section situation. It is, however, in process of correction.

We find that the increased rates here in issue for the transportation of sulphur and brimstone from north Atlantic ports to points in central freight association and adjacent territories have been justified, and the complaint will be dismissed. The fourth section relief asked will be denied.

Orders will be entered accordingly.

No. 6465.
PILLSBURY FLOUR MILLS COMPANY
v.
GREAT NORTHERN RAILWAY COMPANY.

Submitted November 13, 1915. Decided May 9, 1916.

Rate charged for the transportation of durum wheat in carloads from Duluth, Minn., to Anoka, Minn., not found unreasonable. Complaint dismissed.

Littleford, James, Ballard & Frost; Francis B. James; and E. E. Williamson for complainant.

John F. Finerty for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in milling grain at Anoka, Minn., with its principal office at Minneapolis, Minn. By complaint, filed January 2, 1914, it alleges that the charges collected by defendant for the transportation of durum wheat in carloads from Duluth, Minn., to Anoka, between February 5, 1912, and June 12, 1912, inclusive, were unreasonable. Reparation is asked and the establishment of a reasonable rate for the future. Rates herein are stated in cents per 100 pounds.

Anoka is a local station on the Great Northern Railway 19 miles northwest of Minneapolis and 143 miles from Duluth. The shipments aggregated 6,624,052 pounds, were consigned to Anoka to be milled in transit for Chicago, Ill., and moved over the Great Northern interstate through Superior, Wis. Charges were collected in the sum of \$8,280.64 at the joint rate of 12½ cents applicable on durum wheat in carloads from Duluth to Chicago by way of the Great Northern to Minnesota Transfer, Minn., and the Chicago, Burlington & Quincy Railroad beyond. Defendant's transit regulations required complainant to pay the full rate from Duluth to Chicago when the wheat was delivered at Anoka, but provided for the transportation of the milled product from Anoka to Chicago without additional charge if forwarded within one year after delivery of the wheat at Anoka. Neither the wheat nor its product moved from Anoka to Chicago under the 12½-cent transit rate. Defendant has refunded to complainant the difference between the charges collected

and the charges that would have accrued under the local rate of 7½ cents contemporaneously in effect from Duluth to Anoka. The 7½-cent rate is alleged to have been unreasonable to the extent that it exceeded 5 cents.

The complaint is attributable to a change in defendant's transit regulations and practices effective August 15, 1912, and a brief résumé of the situation existing at that time is essential to a proper understanding of the issues. Complainant carried two separate and distinct transit accounts at its Anoka mill, one known as the Duluth-Chicago account covering wheat shipped from the head of the lakes to Chicago, and the other known as the Minnesota-Dakota account covering wheat shipped from points on the Great Northern in certain sections of Minnesota and South Dakota to Chicago. The through rate from Duluth to Chicago exceeded the local rate from Duluth to Anoka by 5 cents. Through rates from Minnesota-Dakota territory to Chicago generally were 7½ cents higher than the local rates to Anoka. Defendant's regulations governing the milling in transit of wheat originating in either territory required payment of the full rate from the point of origin to Chicago when the wheat was delivered at Anoka, limited the transit to one year, and provided that if the wheat or its product was not forwarded to Chicago under the transit rate, the difference between the through rate charged and the local rate from the point of origin to Anoka would be refunded.

The supplemental report rendered in the *Transit Case*, 24 I. C. C., 340, issued June 5, 1912, directed attention to certain loose and illegal transit practices prevailing at that time, including the failure of carriers to cancel surplus billing, concerning which we said:

Our inquiry has disclosed in many instances large amounts of surplus billing on hand * * *. Where a transit house has surplus billing on hand for several million pounds of grain which has disappeared from its possession, * * * it is clear that the commodity has not been policed by the carrier in accordance with its plain duty * * *. The rules must require that the surplus billing, that is to say, all billing which does not represent grain actually on hand, shall be canceled absolutely at the close of each day. This daily cancellation down to the basis of stock on hand is vital, and we shall insist on a literal adherence thereto.

Following the issuance of this report defendant adopted more rigorous transit regulations and practices. Its agents were instructed to open new transit accounts covering all grain received on and after August 15, 1912, to ascertain the actual tonnage of grain or its products in transit houses at the close of business August 14, 1912, and to cancel all billing which did not represent grain or its products actually stored in transit houses at that time. Operators of transit houses were directed to present claims to the carrier for

refund of all charges paid on the canceled tonnage in excess of the local rate to the milling station.

There was no surplus transit credit in complainant's Minnesota-Dakota account at the close of business on August 14, 1912, but its Chicago-Duluth account disclosed a surplus credit of 14,362,144 pounds, that is to say, the tonnage of wheat shipments from Duluth to Anoka to be milled in transit for Chicago covered by expense bills which had not been used for Chicago transit, exceeded to the extent of 14,362,144 pounds the aggregate weight of the outbound shipments of product to Chicago and wheat or its products then in complainant's mill. This surplus billing was canceled. Complainant thereafter filed a claim with defendant alleging that 7,738,092 pounds of products manufactured from wheat originating at Duluth and forwarded to Chicago or to Chicago rate points prior to August 15, 1912, had erroneously been charged against the Minnesota-Dakota account. Defendant had charged all outbound shipments from the Anoka mill to the Minnesota-Dakota account for a long period, and this fact, if known to complainant, had been disregarded because the billing from Duluth to Chicago or from Minnesota-Dakota points to Chicago was of equal value for transit purposes. The Minnesota-Dakota billing, however, had a refund value of $7\frac{1}{2}$ cents as against a refund value of 5 cents of the Duluth-Chicago billing. For this reason complainant desired a correction of the transit account, as the billing was no longer available for transit use. The matter was called to our attention informally, and the carrier was advised that if the error had been made, as alleged, the transit account should be corrected. Defendant thereupon readjusted its transit records and refunded to complainant on 7,738,092 pounds of the unused transit the difference of approximately $7\frac{1}{2}$ cents between the local rates from the points of origin to Anoka and the through rates to Chicago. The 6,624,052 pounds of surplus billing remaining in the Duluth-Chicago account after correction of the transit records is the subject matter of this complaint.

Complainant asserts that if it had not been for our order in the *Transit Case, supra*, the surplus billing would not have been canceled, but could have been used to obtain the transportation of an equivalent tonnage of wheat products from Anoka to Chicago. Our final report in the *Transit Case*, 26 I. C. C., 204, is cited in support of this assertion. In that report, issued February 10, 1913, we withdrew the orders and requirements which we had previously promulgated upon representation by the carriers that they could and would publish and enforce transit regulations and practices which would conform to the requirements of the law. Complainant construes that action as an admission that our previous orders and requirements, including the

rule with respect to the cancellation of surplus billing, were erroneous, and argues that it should not be subjected to loss because of the alleged error on our part. Our report in *National Casket Co. v. S. Ry. Co.*, 31 I. C. C., 678, disposes of this contention. In that case we stated, at pages 687, 688:

There is no warrant for assuming * * * that we have receded in any degree from the opinions hitherto expressed, touching the unlawfulness of any practice or device not authorized by the tariff by which the integrity of a through rate is impaired; unjust discrimination or undue preference is given or secured; or the requirements of the law or the tariff are in any wise evaded. The law is as binding upon the shippers and the carriers as it was before we rescinded rule 76 and withdrew our suggestions. The obligation to observe its letter and spirit rests no less lightly upon all parties subject to its provisions. The penalties for its violation are unchanged. It is now, as it was then, the duty of the carriers to initiate and properly police their transit arrangements. It is now, as it was then, the duty of the shipper to conform his operations to the requirements of the law and of all reasonable rules and regulations of the carrier designed to insure the observance of the law.

Defendant has refunded the difference between the through rate of 12½ cents from Duluth to Chicago and the local rate of 7½ cents from Duluth to Anoka. Complainant's contention that the rate assailed was unreasonable rests largely upon the theory that the movement of the wheat from Duluth to Anoka should not be regarded as local, but as part of a continuous or related through movement. Complainant contends that the shipments possessed none of the characteristics of local shipments and that it is entitled to—

the difference between a just and reasonable rate for the transportation service rendered from Duluth to Anoka *as part of a through interstate transportation service from Duluth to Chicago* and the rate paid, i. e., 12½ cents per 100 pounds.

Defendant asserts on the other hand that the movement was purely local and that in considering the question of whether the rate charged was unreasonable, it must be viewed as a local rate rather than as a proportion of a through rate.

Durum wheat flour is used chiefly in the manufacture of macaroni, and appears not to be consumed locally at Anoka. Complainant's witness testified in a general way that the wheat originated beyond Duluth and that the product was actually reshipped from Anoka to Chicago or to Chicago rate points subsequently to August 14, 1912, but did not prove his assertion. The wheat and its product obviously had been disposed of prior to August 14, 1912, for it was not then stored in complainant's mill. As the inbound billing was not used for transit purposes and there was no local consumption, apparently the only conclusion that can be drawn is that the surplus billing represented wheat or its products forwarded from Anoka

prior to August 14, 1912, to nontransit points, or to transit points other than Chicago.

We have held in several cases that when for any reason a commodity or its product is not forwarded from the transit point in accordance with the provisions of the transit tariffs, the inbound shipments become localized and subject to the legal rate from the point of origin to the milling point. The same view is expressed in Conference Ruling No. 350, as follows:

Under transit tariffs requiring the payment of the full rate to final destination at the time the shipment is delivered at the transit point, it sometimes occurs that a shipment is never forwarded to the destination to which charges have been paid: *Held*, That it is not unlawful or improper in such cases to refund the charges that have been paid in excess of what the lawful charges on the shipment would have been if the transit point had been its final destination.

While the transportation of the wheat from Duluth to Anoka may have been part of a through movement in the sense that it was one step in the movement of the wheat from the point of its production beyond Duluth to the final destination of the product, beyond Anoka, it was not, so far as appears, a part of a continuous or related through transportation service. The point of origin of the wheat, the destination of the product, and the rates charged beyond Duluth and Anoka are not shown and the total rate charged is not attacked. Under these circumstances we can not sustain complainant's contention that the service performed was a part of a through service from Duluth to Chicago. The shipments are to be regarded only as local traffic from Duluth to Anoka.

Complainant's evidence with respect to the reasonableness of the rate charged consists chiefly of comparisons with a rate of 5 cents on durum wheat from Duluth to Anoka, effective September 15, 1912, after the movements had been performed and still in effect; a proportional rate of 6 cents on durum wheat from Duluth to Minneapolis with milling in transit at Anoka, effective July 5, 1912, after the movements had been performed; and defendant's average rates and earnings on all traffic.

The 5-cent rate from Duluth to Anoka was established upon complainant's solicitation and in connection with a general readjustment of rates on flour from Anoka to Kansas City, Mo., Omaha, Nebr., and points in the southwest, made for the purpose of enabling complainant to dispose of its product in the southwestern markets in competition with Minneapolis millers. It was published first as a local rate, but 18 months later its application was restricted to wheat originating beyond Duluth or Superior. Wheat shipped from Duluth or Anoka to be milled in transit for Chicago continued to move under

the joint rate of 12½ cents, and as to such traffic the 5-cent rate derives its only significance from the fact that under the transit regulations, effective August 15, 1912, complainant was required to pay the local rate upon delivery of the wheat at Anoka instead of the Duluth to Chicago joint rate, as provided by the transit rules previously in effect. The balance of the through rate was not payable until the product went forward to Chicago. From these changes in the rates and transit regulations it resulted that complainant secured the transportation of its wheat from Duluth to Anoka on and after September 15, 1912, at a rate of 5 cents, irrespective of whether the milled product was forwarded to Chicago or disposed of at some other point. The 6-cent proportional rate from Duluth to Minneapolis was also established upon complainant's request in order that complainant might compete with Minneapolis millers in the markets east of Chicago.

The circumstances under which these rates were established clearly show that they were made effective with little or no regard to the question of whether they yielded adequate compensation for the transportation of local traffic from Duluth to Anoka or Minneapolis, and that the chief end in view was to establish rates that would enable complainant to compete with Minneapolis millers in markets which it could not reach under the rates previously in effect. Complainant's comparisons therefore can not be regarded as controlling. Complainant also contends that the rate charged was unreasonable because it exceeded defendant's division of the joint rate of 12½ cents from Duluth to Chicago, but as we have often said the division of a joint rate which a carrier accepts is not a fair measure of its local rate.

The rate charged yielded 10.5 mills per ton-mile and 39.5 cents per car-mile for the short-line distance of 143 miles over defendant's line through Milacca, Minn. The 5-cent rate yields 7 mills per ton-mile and 26.4 cents per car-mile. It appears, however, that for operating reasons shipments of wheat from Duluth to Anoka necessarily are moved through Coon Creek Junction and Minneapolis, a distance of approximately 169 miles.

Complainant contrasts the ton-mile and car-mile earnings on the shipments with the average earnings on all traffic handled by the Great Northern system and also with defendant's average earnings on Minnesota intrastate and interstate traffic. For the years 1911, 1912, and 1913 defendant's average earnings on all traffic per ton-mile were 8.1 mills, 7.69 mills, and 7.65 mills, respectively, and per car-mile 16.19 cents, 16.87 cents, and 17.61 cents. During the same years its average earnings per ton-mile on Minnesota traffic were 7.55 mills, 7.13 mills, and 7.06 mills; per car-mile, 17.73 cents,

18.12 cents, and 19.03 cents. While this comparison shows that defendant's earnings under the rates charged materially exceeded its average earnings on all traffic, such a showing does not demonstrate that the rate charged was excessive. *Coke Producers Asso. of Connellsville v. B. & O. R. R. Co.*, 27 I. C. C., 125; *Ontario Iron Ore Co. v. N. Y. C. & H. R. R. Co.*, 30 I. C. C., 566.

Defendant's evidence shows that the rate charged was less than the local rates from Duluth to other milling points similarly situated. The local rates of 9 cents contemporaneously in effect from Duluth to St. Cloud, Minn., 140 miles, and to Deer River, Minn., 125 miles, were cited as examples. The present local rate of 9.1 cents from Duluth to Anoka was approved in *Freight Rates from Minnesota Points*, 32 I. C. C., 361. The present Minnesota intrastate rate applicable on wheat in carloads for a distance of 143 miles is 8.6 cents. Under the Minnesota intrastate rate scale the maximum distance that wheat may be transported at a 5-cent rate is 35 miles.

Upon all of the facts of record we find that the rate assailed is not shown to have been unreasonable, and an order dismissing the complaint will be entered.

No. 8179.
PULP & PAPER MANUFACTURERS TRAFFIC
ASSOCIATION
v.
BELT RAILWAY COMPANY OF CHICAGO ET AL

Submitted January 23, 1916. Decided May 16, 1916.

Rates for the transportation of sulphur in carloads from Sulphur Mines, La., to points in Wisconsin and the upper peninsula of Michigan not shown to be unreasonable or unjustly discriminatory. Complaint dismissed.

J. E. Bryan for complainant.

Fred H. Wood and Denegre, Leovy & Chaffe for Morgan's Louisiana & Texas Railroad & Steamship Company.

C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

Complainant, an association of 41 corporations engaged in the manufacture and sale of wood pulp and paper, by its complaint attacks as unreasonable and unjustly discriminatory the rates applicable to the transportation of sulphur from Sulphur Mines, La., to destinations in Wisconsin and the upper peninsula of Michigan, commonly known as the Fox River group, Wisconsin River group, and north Wisconsin group, respectively. As limited by the evidence, the allegations of unjust discrimination are directed against the unreasonableness of the rates in issue when compared with rates on the same commodity from Baltimore, Md., and Newport News, Va., to the same destinations. Rates are stated in cents per 100 pounds.

Sulphur Mines is a station located on the rails of the Brimstone Railroad & Canal Company, a short line which connects with Morgan's Louisiana & Texas Railroad at Brimstone Junction, La., and with the Kansas City Southern at Lockport Junction, La. More than 90 per cent of the all-rail tonnage from Sulphur Mines to the territory here involved moves via Morgan's Louisiana & Texas Railroad through the New Orleans gateway and thence north by connecting lines to destination. The rate from Sulphur Mines to the

Fox River and Wisconsin River groups is 31.5 cents, and to the north Wisconsin group, 33.5 cents. No complaint is made of the related adjustment between points of destination in these groups, or of the differential of 2 cents in the rate to the north Wisconsin group over the rate to the other groups.

Complainant's rate comparisons are confined to those applicable to the transportation of sulphur from Baltimore, Md., and Newport News, Va., to the same destinations. These rates are 22.5 cents to the Fox River and Wisconsin River groups, and 25 cents to the north Wisconsin group, made by the combination of 17 cents to Milwaukee, plus proportional rates to destination. It appears, however, from an examination of tariffs on file that the proportional rate to Quinnesec, Mich., a point in the north Wisconsin group, is 7½ cents, making the combination rate to that point 24½ cents, and that a joint through rate of 30 cents is effective from Baltimore to Eau Claire, Rhinelander, and Ladysmith, Wis., and from Newport News to Eau Claire, points which are also in the north Wisconsin group. The following table is compiled from evidence submitted by the complainant. It shows the average distances from Baltimore, from Newport News, and from Sulphur Mines via New Orleans to five points in the Fox River group, to three points in the Wisconsin River group, and to four points in the north Wisconsin group, respectively, together with the average per ton-mile and per car-mile earnings. The car-mile earnings from Sulphur Mines are based on 481 cars of sulphur which were received by all-rail routes in 1914 at 12 destinations, averaging for the three groups, respectively, 34.4, 37.3, and 38.1 tons per car:

From—	To 5 points in the Fox River group.			To 3 points in Wisconsin River group.			To 4 points in north Wisconsin group.		
	Average distance.	Average ton-mile earnings.	Average car-mile earnings.	Average distance.	Average ton-mile earnings.	Average car-mile earnings.	Average distance.	Average ton-mile earnings.	Average car-mile earnings.
	Miles.	Mills.	Cents.	Miles.	Mills.	Cents.	Miles.	Mills.	Cents.
Baltimore.....	985	4.7	16.4	1,062	4.2	15.0	1,112	4.5	15.8
Newport News.....	1,100	3.9	13.6	1,233	3.7	13.8	1,292	3.9	13.6
Sulphur Mines (via New Orleans).....	1,363	4.6	16.2	1,395	4.5	16.5	1,463	4.6	16.7

The ruling price of sulphur at the mine is \$20 per ton of 2,240 pounds. It is classified class C in the western classification, which governs traffic from Sulphur Mines to the destinations here involved. The class C rate from Lake Charles, La., located 15 miles from Sulphur Mines, to points in the Fox River group is 67 cents. The class E rate, the lowest rating in the western classification, to those points is 49 cents.

This constitutes in substance all of complainant's evidence which relates to the reasonableness of the rates under attack. Defendants show that these rates to the greater number of the destinations involved became effective in 1903, while to other points in the same groups the same rates were later prescribed as the demand for sulphur developed. They were established originally to permit the movement of sulphur by rail from Sulphur Mines in competition with the same commodity then moving from Sicily through the Atlantic ports. At the present time the movement from Sicily has greatly diminished, although there is a substantial tonnage from Sulphur Mines through the Atlantic ports, by water. *Union Sulphur Co. v. B. & O. R. R. Co.*, 39 I. C. C., 349. In that case it was held that increased rates on crude sulphur and brimstone from Atlantic ports to points in central freight association territory had been justified.

Defendants offered numerous comparisons to show the reasonableness of the rates under attack, but it would be of little use to state them at length. The rates from the Atlantic ports upon which complainant relies in support of its allegation of unreasonableness are applicable through a territory where substantially lower rates are in effect than in the territory through which sulphur moves all rail to points in Wisconsin and the upper peninsula of Michigan. For this reason complainant's rate comparisons are not convincing. Nor does the evidence of the earnings per ton-mile or per car-mile convince us that the rates in issue are unreasonable. An order will accordingly be entered dismissing the complaint.

39 I. C. C.

No. 6446.
CITY OF MILWAUKEE
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

Submitted April 27, 1915. Decided May 16, 1916.

Upon complaint by the city of Milwaukee that the rates on anthracite coal in carloads from Pennsylvania mines to Milwaukee are unreasonable and unduly discriminatory; *Held:*

1. That neither the rates all rail nor those via the car ferries across Lake Michigan have been shown to be unreasonable or to discriminate unduly against Milwaukee.
2. That the across-lake rate for local delivery at Milwaukee, which is 25 cents higher than the proportional across-lake rate to Milwaukee on traffic destined beyond, has not been shown to discriminate unduly against Milwaukee. Complaint dismissed.

D. W. Hoan and Thomas H. Gill for complainant.

J. N. Davis for Chicago, Milwaukee & St. Paul Railway Company.

R. H. Widdicombe for Chicago & North Western Railway Company.

D. P. Connell for New York Central lines.

H. A. Cochran for Baltimore & Ohio Railroad Company.

C. M. Booth for Pere Marquette Railroad Company.

S. L. Strauss for Grand Trunk Railway Company of Canada and Grand Trunk Western Railway Company.

Walter C. Noyes for Delaware & Hudson Company.

J. L. Seager for Delaware, Lackawanna & Western Railroad Company.

H. A. Taylor for Erie Railroad Company and Chicago & Erie Railroad Company.

E. H. Boles for Lehigh Valley Railroad Company.

C. L. Andrus for New York, Ontario & Western Railway Company.

George Stuart Patterson for Pennsylvania Railroad Company and Pennsylvania Company.

William L. Kinter for Philadelphia & Reading Railway Company.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

By complaint, filed December 22, 1913, the city of Milwaukee attacks as unreasonable and unduly discriminatory the carload rates on anthracite coal, prepared or domestic sizes, from the collieries in Pennsylvania to Milwaukee, Wis. This case was twice set for hearing and twice postponed at the request of complainant. Its disposition was further delayed to await decisions in other cases involving similar issues.

The rates on anthracite coal in carloads from the Pennsylvania mines to Milwaukee are either all-rail rates made on the Chicago combination, or those in effect over the rail and lake routes of the Grand Trunk Railway and the Pere Marquette Railroad through Grand Haven and Ludington, Mich., respectively, in connection with the car ferries across Lake Michigan. At the time of the hearing the rates per long ton to Milwaukee, Chicago, and other points were as follows. Rates are stated in dollars per ton:

Chicago and Chicago rate points-----	\$3.50
Peoria, Ill-----	3.75
St. Louis, Mo., and East St. Louis, Ill-----	4.00
Milwaukee local by car ferry-----	4.00
Milwaukee proportional by car ferry-----	3.75
Milwaukee all rail via Chicago-----	4.172

The \$3.50 rate to Chicago in effect at the time of the hearing applied both for local delivery at Chicago and on traffic destined beyond. It was a joint rate applicable through the Niagara frontier, and was originally made to meet the single-line rate of the Pennsylvania lines through Pittsburgh and Fort Wayne. Out of this rate the division of the trunk line carriers for the haul to the Niagara frontier was \$1.75, thus leaving \$1.75 as the division of the lines west of the Niagara frontier. On traffic to points to which no joint through rates applied, as is the case with Milwaukee, the lines east of the Niagara frontier, however, demanded \$2. It is for this reason that at the time of the hearing, although the Grand Trunk and the Pere Marquette carried a \$1.75 proportional rate from the Niagara frontier to Milwaukee, the total charges to Milwaukee on traffic destined for beyond were 25 cents higher than those to Chicago.

Anthracite coal reaches Milwaukee through Buffalo via the great lakes at a rate of \$2.55 per long ton. Milwaukee receives annually through Buffalo and other lake ports about 1,200,000 tons of anthracite coal. Only about 400,000 tons, however, are consumed locally. Anthracite coal is also shipped via the lakes to Chicago. The price of anthracite coal is the same in both cities.

Although complainant alleges in its complaint that the all-rail rates to Milwaukee, made up of the Chicago combination, are unreasonable in themselves, no evidence was introduced at the hearing to sustain that allegation. Complainant bases its entire case on the contention that the rates to Milwaukee, both all rail and via the car ferries, discriminate unduly against that city.

Complainant alleges that for the trunk lines east of Buffalo to accept \$1.75 as their division of the joint through rate of \$3.50 to Chicago, while receiving \$2 on traffic destined to Milwaukee for identically the same haul, discriminates unduly against Milwaukee. Since the hearing the Chicago rate has been raised to \$3.75, the entire increase of 25 cents going to the trunk lines east of Buffalo. This increased rate was approved in *Anthracite Coal Rates to Chicago, Ill., and Other Points*, 35 I. C. C., 702. Therefore, whether the haul from the mines to Buffalo is on coal destined to Chicago under a joint through rate or merely a local haul to Buffalo on coal destined to Milwaukee, the trunk line carriers now receive \$2 as their revenue. Any discrimination that may have prevailed by reason of the former difference in charges to Buffalo of the trunk line carriers no longer exists.

Complainant further alleges that the all-rail rates to Milwaukee via Chicago unduly discriminate against Milwaukee in that they are higher than the Chicago all-rail rates. Complainants contend that since practically all commodity rates from trunk line territory all rail to Milwaukee take the Chicago rates, Milwaukee being a 100 per cent rate point in the New York-Chicago adjustment, it is unduly discriminatory for the carriers not to apply the same rates on anthracite coal to both points. Rates on bituminous and anthracite coal from producing points in trunk line territory to points in the west, including Chicago and Milwaukee, have never been adjusted with relation to the general scale of rates applicable to merchandise and other freight. The defendants insist that the rates on coal are too low to permit of such an adjustment.

We are of opinion and find that the defendant carriers do not discriminate unduly against the city of Milwaukee by refusing to apply the same rates to Milwaukee as they apply to Chicago on coal moving all rail to both points.

Complainants further allege that the \$4 rate via the ferries across the lake for local delivery at Milwaukee unduly discriminates against Milwaukee in that it exceeds by 25 cents the proportional across-lake rate to Milwaukee applicable on traffic destined for beyond. Complainant, however, introduced little evidence besides the broad statement made by one of its witnesses that proportional and local rates are generally the same. The Pere Marquette and the Grand Trunk

have very limited terminal facilities in the city of Milwaukee, and are required to absorb switching or other charges on local deliveries. Where the traffic moves through Milwaukee to other points, however, it is accepted at the ferry docks by the lines which receive the line haul on the traffic outbound. Proportional rates on anthracite coal are in a number of instances, and especially to gateways, lower than the local rates. This is the case at Mackinaw City, Mich., Kankakee, Ill., and other points.

We are of opinion and find that complainant has failed to show that the across-lake rate for local delivery at Milwaukee, which is 25 cents higher than the proportional across-lake rate to Milwaukee on traffic destined for beyond, discriminates unduly against Milwaukee.

The complaint will be dismissed.

39 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 618.
LUMBER FROM MICHIGAN POINTS.

Submitted March 12, 1916. Decided May 16, 1916.

Upon rehearing the conclusions stated in the former report so modified as to permit respondents to readjust rates to Toledo in order to eliminate certain inequalities and discriminations. Proposed increased rates to other points found to be not justified and the same required to be withdrawn.

D. P. Connell for respondents.

Hal H. Smith and *Beaumont, Smith & Harris* for Saginaw Valley Lumber Dealers' Association.

REPORT OF THE COMMISSION ON REHEARING.

McCHORD, Commissioner:

In this proceeding, the original report in which will be found in 36 I. C. C., at page 184, the respondents proposed to increase their rates for the transportation of lumber in carloads from producing points in Wisconsin and Michigan to points situate in the lower peninsula of Michigan and along the northern borders of the states of Ohio, Indiana, and Illinois. The rates suspended represented an increase over prior rates, which had themselves been increased following our decision in *The Five Per Cent Case*, 31 I. C. C., 351, and were sought to be justified upon the ground, principally, that they were necessary in order to preserve to respondents the benefit of increases which, shortly prior thereto, had been authorized by the Michigan Railroad Commission in rates between points within that state.

The situation in respect of the intrastate rates which, as we understood it, existed at the time our original report was promulgated is therein described, page 186:

The increased intrastate rates were unsatisfactory to the lumber shippers, and subsequent proceedings resulted in bringing the lumber rates again before the Michigan commission, which body, as a result of a further hearing, modified its original decision so as to permit an increase in the intrastate rates of 5 per cent only, except that in order to eliminate discrimination alleged to exist against points in the western part of the state in favor of points in the eastern part it provided that the rates to Detroit from all stations within a distance of 125 miles thereof should be increased 1 cent net per 100 pounds.

This readjustment of the intrastate rates, which conforms, substantially, to a compromise proposition submitted to the Michigan commission by the shippers

and carriers, was pending before the state commission at the time of the hearing in this proceeding. Referring to that proposition, counsel for one of the principal respondents herein says on brief:

"If the proposed readjustment meets with the approval of the Michigan commission, it will result in reductions in the intrastate rates, and doubtless will eliminate the necessity for advancing the rates to a number of the interstate points involved. The desire of the carriers is simply to maintain a relative adjustment between the intrastate points and the border points just across the state line."

* * * * *

The situation as between the intrastate and the interstate rates did not exist prior to the increases in the intrastate rates under the state commission's first order. By the state commission's later order, promulgated since the hearing in this proceeding, the intrastate rates are, with the exception of rates to Detroit, reduced to a basis just 5 per cent over the rates in effect immediately prior to October 26, 1914, which means a net increase in the intrastate rates at the same ratio as that permitted in *The Five Per Cent Case, supra*.

It was further said, page 189:

In view of the modification of the state commission's first order we assume that the inequalities sought to be remedied by the increased interstate rates no longer obtain and that the principal reason advanced by respondents in justification of the latter rates no longer exists.

We found that proposed increased rates were justified to Toledo, Ohio, and points taking same rates only. All other proposed increased rates were found not to have been justified, and the respondents were directed to cancel them and restore those authorized by our decision in *The Five Per Cent Case, supra*.

In approving the modified intrastate adjustment the Michigan commission stated in its report that it did so in the expectation—

that the carriers will take the necessary steps to eliminate as far as possible all unreasonable existing differences between the rates charged in the western portion of the state and those charged in the eastern portion of the state in such a manner as on the whole to enjoy the advance shippers have expressed their willingness to grant.

This statement seems to have been construed by the carriers as authorizing or directing them to remove unjust discrimination against Cadillac in favor of Bay City, Saginaw, and other points to points in the southwestern part of the state, and they therefore increased the rates to the latter section from various producing points on the eastern side of the state, including the Saginaw Valley points, by more than 5 per cent instead of reducing the rates from Cadillac. These changes, it will be observed, were made subsequent to the time of issuance both of the state commission's report and our own. The state rates thus increased, we are advised, are now the subject of a complaint pending before the state commission.

The rehearing herein, granted upon petition of respondents, has been had to give further consideration to two aspects of the situation affecting the interstate rates: (1) Respondents' desire to estab-

lish from points situate in the territory northerly from Cadillac and Saginaw Valley points to Toledo rates other than those which they would have been required to establish under our order of October 5, 1915, which they now show would disturb the adjustment of rates from that general territory to Toledo and points taking Toledo rates, and would result in inequalities and unjust discriminations between the producing points. This situation, the correction of which involves reductions in rates from a number of northern points, was not developed upon the original hearing. (2) Respondents also resubmit, with some modifications, the rates originally proposed and suspended to certain other points situate in northern Ohio, Indiana, Illinois, and Wisconsin. These we are asked to further consider and approve. The modified schedules, as set forth in an exhibit filed of record, involve some reductions as well as increases. It is now urged by respondents, in justification of the increased rates, that they are necessary in order to preserve a proper adjustment between the interstate rates and the intrastate rates to points along the southern border of Michigan which they established on October 15, 1915, under their construction of the state commission's decision.

It may fairly be inferred from the record that respondents would have found no occasion for seeking a rehearing in respect of any interstate rates other than those involved in the Toledo adjustment had they not, under their construction of the language in the state commission's report enjoining them—

to eliminate as far as possible all unreasonable existing differences between the rates charged in the western portion of the state and those charged in the eastern portion of the state—

elected to increase the rates from the Saginaw Valley points to points in southwestern Michigan instead of reducing the rates from Cadillac to those points. The increased rates from Saginaw Valley points to southwestern Michigan points were published in state tariffs issued October 1, 1915, and became effective October 15, 1915. Our original report herein was adopted October 5, 1915.

The protestants have agreed to the suggested adjustment of rates to Toledo from points north of Cadillac and the Saginaw Valley points, and we find that the rates and the adjustment proposed have been justified and respondents may establish the same.

But little evidence has been introduced touching the reasonableness of the proposed increased rates to the other interstate points. The exercise of an optional privilege, if, indeed, such were extended by the state commission's report and order, of increasing the intrastate rates from Saginaw Valley points instead of reducing those from Cadillac, to destinations in southwestern Michigan can not,

in the absence of other justifying circumstances, be held to discharge the burden of proof resting upon the respondents to show that the proposed increased rates to the interstate points are just and reasonable. As was said in the original report, some concrete and persuasive evidence touching the reasonableness of the latter must ordinarily be adduced. Some changes, principally increases, are proposed in rates to Chicago, Kenosha, Racine, Milwaukee, and Manitowoc. The adjustment of rates to these points from Cadillac and other Michigan producing points is now before us in another proceeding. *Cadillac Lumber Exchange v. A. A. R. R. Co.*, Docket 8329. We shall deny the increases here proposed, but this disposition is without prejudice to any readjustment which may appear necessary or justified by the record in the pending case referred to.

At the time the rehearing in this case was granted the order entered October 5, 1915, was vacated and set aside, the respondents agreeing to voluntarily postpone the effective date of the proposed increases until their propriety and reasonableness could be determined. The proposed increased rates are accordingly being carried in tariffs or supplements scheduled to become effective at future dates. The respondents may file new schedules establishing the proposed rates necessary to work out the adjustment of rates to Toledo, putting the same into effect upon not less than five days' notice, and canceling at the same time all other proposed increased rates. When this has been done an appropriate order will be entered.

39 I. C. C.

No. 8201.

R. J. REYNOLDS TOBACCO COMPANY

v.

ABILENE & SOUTHERN RAILWAY COMPANY ET AL.

Submitted January 7, 1916. Decided May 16, 1916.

1. Requirements of the carriers throughout the country that fiber-board, pulp-board, and strawboard packages of cigarettes shall be strapped and sealed, or fastened with staples or stitched with wire at all openings, or subjected to other such requirements, in order to entitle them to the first-class rate, found unreasonable and unjustly discriminatory.
2. Requirements that wooden boxes of cigarettes shall be strapped, corded, and sealed to entitle them to the first-class rate, and the requirement of the western classification that fiber-board packages of cigarettes shall have a united outside measurement of not less than 30 inches, not shown to be unreasonable or unjustly discriminatory.

J. L. Graham and B. S. Womble for complainant.

R. Walton Moore and Edward H. Hart for defendants.

R. C. Fyfe for lines members of Western Classification Committee.

R. N. Collyer for lines members of Official Classification Committee.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

The complaint herein, filed August 6, 1915, assails as unreasonable and unjustly discriminatory the requirements of the official, western, and southern classifications, and other tariffs, with respect to the packing of cigarettes for interstate shipment. Practically all carriers in the United States subject to the act to regulate commerce are made defendants.

The requirements of all the carriers, so far as material to the decision of this case, with a few unimportant exceptions, are and have been substantially the same. We therefore do not deem it necessary for the purposes of the report to set forth in detail the provisions of the several classifications and tariffs involved. It suffices to say that when the complaint was filed the general rule was that cigarettes, in order to be entitled to the application of the first-class rate, had to be packed in boxes made of wood, secured by wooden, iron, or wire straps, and by a cord around the center, passed in and out through each and every board of the four sides of the box, tightly drawn and

S. L. C.

fastened with a metal seal bearing identification marks. The southern and the western classifications, however, did not require cording when strapped boxes complying with certain specifications were used. The first-class rating, with about the same requirements as outlined above, had existed ever since the promulgation of the first classifications. The use of fiber-board, pulpboard, and strawboard packages was also permitted, and the application of first-class rates was provided thereon, by western classification only, but was so hedged about by onerous requirements respecting the securing of the packages as to make their use almost impracticable. The western classification further required and still requires that all fiber-board packages of cigarettes must have a united outside measurement of not less than 30 inches, i. e., length, breadth, and depth added. Packages not complying with the various rules above referred to were not in all cases subject to rejection, but the penalties provided for their use—namely, the application of double or three times first-class rate—resulted in prohibitive freight charges. As will hereinafter appear, some changes have been made in the requirements since the complaint was filed. The term fiber board, as hereinafter used, will include pulpboard and strawboard.

The proceeding was instituted to secure the application of first-class rates on cigarettes in wooden boxes or in fiber-board containers without packing requirements such as those above referred to. We may say at this point, however, that but little evidence was offered respecting the requirements as to wooden boxes, and the record does not warrant a finding that they are unreasonable or discriminatory. Nor has the requirement of the western classification that fiber-board containers shall have a united outside measurement of not less than 30 inches been shown unjustified, although, as stated by complainant, a provision in southern classification that all fiber-board packages of cigarettes must weigh at least 15 pounds was eliminated upon complaint to the carriers. The only remaining issue in the case is whether or not the present packing requirements as to fiber-board containers are reasonable and nondiscriminatory.

Shortly after the complaint was filed, namely, between October 1, 1915, and January 1, 1916, all of the carriers, by amendments to their several classifications and tariffs, provided, and still provide, for the use of fiber-board containers for cigarettes at first-class rates, subject to the requirement that the package be secured with two or more metal straps, not less than 29 gauge and not less than three-eighths inch in width, encircling the package at least once around the end and once around the side, and drawn taut to prevent slipping. The ends of the straps are to pass through a metal sleeve and to be crimped. The straps are also to be crimped at the cross-

ings and intersections. On boxes exceeding 24 inches in length, metal straps are to be not more than 12 inches apart. The western and southern classifications were further amended to provide that first-class rates would apply on cigarettes in substantial fiber-board containers of standard character, constructed with four flaps on each end, the flaps overlapping each other 2 inches or more and secured by metal staples or stitches not more than 2 inches apart. As new devices for securing the packages may be approved by the various classification committees, additional and appropriate rules or provisions will be adopted and promulgated by the carriers from time to time which will permit their use, and efforts will be made by the Uniform Classification Committee to make the provisions of the several classifications uniform.

Owing to the high ratings and the burdensome requirements complainant did not generally use fiber-board packages for the shipment of cigarettes prior to the promulgation of the new rules above referred to. In order to secure the benefit of the first-class rating, it used wooden boxes, strapping, cording, and sealing them in accordance with the requirements of the carriers.

Complainant desires to enter upon the extensive use of fiber-board packages for this traffic if it can have the restrictions removed, in order to economize in storage space, packing expenses, and freight charges. The saving to complainant would amount to several thousand dollars per month. Fiber board is about 20 per cent lighter than empty wooden boxes and can be stored in large quantities and in much smaller space. The question for determination, reduced to its last analysis, is whether or not the requirements of the carriers respecting the sealing and strapping of fiber-board packages of cigarettes results in a burden upon the shipper which is not commensurate with the benefits derived therefrom by the carriers; in other words, whether or not it is a reasonable requirement.

The primary purpose of all these packing requirements is to prevent what is technically known as concealed loss; that is, the loss by theft in transit, which is not discovered until after delivery of the shipment to consignee, because of the fact that there is no indication on the package that it has been tampered with.

The cost of strapping and sealing a fiber-board package of the average size is between 1 and 1½ cents per package. Using a typical year's shipping figures as a basis, it would cost complainant probably more than \$5,000 per annum, but the cost of strapping and sealing as compared with the value of the cigarettes is negligible. Complainant states that when the cigarette business was in its infancy it was no great burden to the shipper to strap, cord, and seal the few pack-

ages, but urges that now when millions of cigarettes are shipped, and 90 per cent of all those manufactured in this country are made by four companies, the burden makes itself manifest. It contends that it is wrong in principle for carriers to have a requirement that costs complainant several thousands of dollars a year where the saving to the carriers might amount to but a few dollars.

The flaps of the fiber-board packages of cigarettes are glued down with silicate of soda, and a paper strip several inches wide is pasted over the full length of the seam. Complainant contends that it is impracticable for a thief to open such a package and then to seal it again without the package evidencing the fact. It was demonstrated by defendants, however, that by the use of sufficient care such an operation could be performed with a knife and a bottle of glue. It was also pointed out by them that the silicate of soda used in gluing the flaps sets almost immediately after being applied and if the work of closing and sealing the package for shipment is not quickly and skillfully performed there is danger that the glue will not hold firmly. The paper strip used in covering the seam may also be improperly fixed or become loosened by moisture. It is clear that for one who is experienced and prepared it is possible to commit the theft without the package showing it. The rules of the carriers in the southern and western classification territories require that all fiber-board packages show the description of the contents and complainant's packages are conspicuously labeled accordingly. Cigarettes move almost entirely in less-than-carload quantities.

Smoking tobacco is carried by defendants in fiber-board packages at the same rate as in wooden boxes and without any special packing requirements such as obtain in connection with cigarettes. During the year previous to the hearing complainant shipped about 1,500,000 fiber-board packages of smoking tobacco without special protection and had but 14 instances of concealed loss thereon. The total amount of shortage was \$15.58, for which no claims were filed with the carriers. The tonnage of these shipments amounted to 56,000,000 pounds and the freight paid thereon aggregated about \$600,000. Complainant contends that the temptation to steal cigarettes is no greater than to steal smoking tobacco, but this is denied by defendants. As already stated the shipments of cigarettes made previous to the promulgation of the present first-class rating on fiber-board containers were in wooden boxes in accordance with the requirements above referred to. During the year previous to the hearing complainant shipped 350,000 such cases of cigarettes and there were but 34 instances of concealed loss, amounting in all to \$45.84.

It is pointed out by complainant that cigars and cigarettes are practically the only commodities on which special precautions are

required to be taken for protecting the package. Special protection is not required on such generally desired articles as liquors, confectionery, firearms, cutlery, shoes, clothing, and certain staple groceries. Defendants say that their experience has been that these articles are not so tempting as cigars and cigarettes, which, they contend, are particularly liable to theft because of their universal use and the ease with which they may be disposed of. Defendants assert that the concealed loss on cigars in wooden packages has been so annoying that many shippers would protect their shipments by strapping, cording, and sealing even if not required by the carriers. But what may be true of cigars in wood is not necessarily to be said about cigarettes in fiber-board packages. The carriers have on foot a movement to require that boots and shoes and some other commodities be subjected to the same requirements in the future as now obtain with respect to cigars and cigarettes for the purpose of preventing concealed loss. It is stated that some shoe manufacturers are already strapping their packages with steel bands, although carriers have not required it, and the results to the shippers have been very gratifying. Some are said to have reduced their claims 50 per cent.

Complainant maintains that the carriers in requiring fiber-board packages to be specially protected are merely following their action with respect to cigars and cigarettes packed in wooden boxes and that the same necessity does not exist with respect to fiber board because a wooden case unstrapped and unsealed could be easily opened by taking off the boards and replacing them, while the fiber-board case would show evidence of having been tampered with unless opened with considerable care and preparation.

The Corporation Commission of North Carolina, in a proceeding instituted by the complainant herein, required the carriers operating wholly within that state to accept at first-class rates cigarettes in standard fiber-board packages without further requirement than that all the flaps be firmly glued and then sealed with a paper strip where the outer flaps meet. Complainant has been shipping under this provision to points in the state of North Carolina during the past year and finds the arrangement entirely satisfactory. But defendants point out that intrastate hauls which are comparatively short and involve but few transfers offer small opportunity for pilferage, and they contend, therefore, that the results in North Carolina do not afford an absolute basis for saying that the arrangement would be satisfactory in so far as long-haul traffic is concerned.

Complainant does not desire to be annoyed by complaints and claims from its customers on account of concealed loss, and asserts that it has therefore as much interest in protecting its shipments from concealed loss as have the carriers, and that if necessary it

would use the strapping for its own protection even if not required by the carriers.

Defendants, taking their general experience as a basis, are earnest in their insistence that the unprotected fiber-board box is not a safe container for cigarettes, and that the present requirements are necessary and should not be relaxed. There can be no question but that the protection afforded by the devices in question practically eliminates concealed loss, and that the removal of such protection would place an additional temptation in the way of the thief. They point out that a special concession can not be made to complainant, and that the highest grades of cigarettes may move without the special protection if complainant prevails in this case. However, most of the cigarettes shipped are not of the higher grades.

Defendants refer to "classification by causes and commodities of amounts adjusted for loss and damage to freight by steam railway carriers having annual revenues exceeding \$1,000,000 for the period January 1, 1914, to December 31, 1914," at page 44 of our twenty-ninth annual report issued December 1, 1915. Tobacco products are shown therein in a list of 25 or 30 commodities to be among those most susceptible to loss by theft. Defendants seek to draw certain conclusions from the figures there shown. But those statistics are too general in nature to be of material assistance in so far as the issues in this case are concerned.

The carriers urge as one matter of defense that the present arrangement whereby complainant may use fiber board would result in a considerable saving to a shipper as compared with the cost of shipping in wood and strapping, cording, and sealing. We think this contention is beside the question for the reason that if the use of fiber-board containers is proper, complainant has an absolute right to use them, and any saving which may thereby be incurred over the cost of using the wooden box is a matter of no concern to the carrier.

Although the temptation to steal cigarettes may be greater than with respect to tobacco and possibly some of the other articles, and although the use of fiber-board boxes unprotected by straps and stitching may result in more theft, we think we are warranted in finding that the cost of strapping and stitching is too great as compared with the benefits derived therefrom and that the requirement therefore constitutes an undue burden. We are of opinion that complainant has sustained the burden of proof. The general experience of defendants is not sufficient to combat complainant's showing and to establish the necessity of the requirements.

Upon the record we are of opinion and find that the requirements of the carriers here complained of are unreasonable and that cigarettes in standard fiber-board packages, meeting the general classifica-

tion requirements, with flaps securely glued and with seams covered by paper sealing strips, should be accepted and transported in interstate commerce at not to exceed the first-class rate.

The parties will probably keep an account of the concealed losses on this commodity. If after a proper trial of the package herein approved the arrangement appears to result in substantially increased losses on cigarettes, the Commission will be ready to hear the newly developed facts.

Defendants will be expected to modify their requirements in accordance with our conclusion herein on or before August 15, 1916. If this is not done we will proceed to the entry of such order or orders as may appear necessary.

HALL, *Commissioner*, dissents.

89 I. C. C.

BITUMINOUS COAL TO MISSISSIPPI VALLEY TERRITORY.¹

Submitted March 31, 1916. Decided May 16, 1916.

1. Distance scale established in the original report, 36 I. C. C., 401, 412, modified to permit the establishment of relative rates from mines in Illinois, Kentucky, and Alabama.
2. Carriers authorized to continue rates on coal from mines in Alabama to Greenville and Vicksburg, Miss., and Suddell, La., lower than rates to intermediate points.
3. Order respecting rates from mines in Illinois, Kentucky, and Tennessee to junction points in Tennessee and Kentucky modified.
4. Order respecting rates from Brilliant and Blocton, Ala., to Kosciusko, Miss., modified.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

In this proceeding the petitioners and certain parties defendant request certain modifications of our original opinion reported in 36 I. C. C., 401.

In the original report carriers were granted authority to continue rates on coal from mines in Illinois, Kentucky, Tennessee, and Alabama to certain points on the Mississippi River, Gulf of Mexico, and waters tributary thereto, and to certain common and junction points in interior Mississippi Valley territory lower than rates contemporaneously applied to intermediate points, upon the condition that the rates to such intermediate points should not exceed rates named in the following scale:

	Per net ton.
For distances not exceeding 250 miles not more than.....	\$1. 45
Exceeding 250 miles, but not exceeding 300 miles, not more than.....	1. 50
Exceeding 300 miles, but not exceeding 325 miles, not more than.....	1. 55
Exceeding 325 miles, but not exceeding 350 miles, not more than.....	1. 60
Exceeding 350 miles, but not exceeding 375 miles, not more than.....	1. 65
Exceeding 375 miles, but not exceeding 400 miles, not more than.....	1. 70
Exceeding 400 miles, but not exceeding 450 miles, not more than.....	1. 80
Exceeding 450 miles, but not exceeding 500 miles, not more than.....	1. 90
Exceeding 500 miles, but not exceeding 550 miles, not more than.....	2. 00
Exceeding 550 miles, but not exceeding 600 miles, not more than.....	2. 10

All other and further relief from the provisions of the fourth section in respect to rates on bituminous coal to points in Mississippi Valley territory was denied by Fourth Section Order No. 5234.

¹ The proceeding embraces complaints in—No. 4872, Brownsville Cotton, Oil & Ice Company v. Louisville & Nashville Railroad Company; No. 6311, H. C. Miller et al. v. Illinois Central Railroad Company et al.; and Fourth Section Applications Nos. 601 et seq.

effective March 1, 1916. By supplemental Fourth Section Order No. 5234, entered February 14, 1916, the effective date of this order was postponed to June 1, 1916, except in so far as it related to rates on bituminous coal from mines in Illinois and Kentucky to points on the lines of the Illinois Central Railroad Company north of Memphis, Tenn., and Grenada, Miss., and rates from mines in Alabama to points on the Alabama & Vicksburg Railway east of Jackson, Miss.

In the same report the carriers, defendants to the complaints therein, were directed to establish rates to certain intermediate points which were found to be reasonable, including a rate of \$1.25 per net ton on bituminous coal from Brilliant and Blocton, Ala., to Kosciusko, Miss. The effective date of the order requiring the establishment of this rate was also postponed to June 1, 1916. An extension of the effective date of the orders in so far as they applied to other rates was denied. The rates in respect to which no postponement beyond March 1, 1916, was granted have been adjusted in compliance with the original order and these need not be further considered.

In the carriers' presentation of the evidence in support of their applications for relief from the fourth section respecting the rates involved, the territory north of that portion of the Memphis division of the Southern Railway extending from Corinth, Miss., to Memphis, Tenn., was dealt with separately, and to a certain extent the same method of procedure has been followed in their request for a modification of our original report in this matter. This is due largely to the closer proximity of the Alabama mines to the lower portion of Mississippi Valley territory and the great rivalry between the lines serving these mines and lines serving mines in Illinois and Kentucky which compete with the Alabama mines for the sale of coal in this territory. We shall therefore consider the two situations separately in this report.

POINTS SOUTH OF THE MEMPHIS DIVISION OF THE SOUTHERN RAILWAY.

The Alabama lines have long contended that owing to the closer proximity of the Alabama mines to this territory and other conditions referred to more fully in the original report the rates from Illinois and Kentucky mines should be on a higher level than the rates from Alabama. The lines serving the northern mines heretofore have refused to recognize this contention and have insisted on a parity of rates except to certain junction points, where rates from Illinois and Kentucky are on a differential basis of 15 cents over rates from Alabama. This has been a constant source of disagreement between the lines serving the two territories of origin, however, and has finally resulted in complaint from the Alabama operators

who have filed a petition to this Commission for the establishment of rates on a differential basis. This complaint is now pending; *Galloway Coal Co. v. A. G. S. R. R. Co.*, Docket No. 7702.

In support of their petition for modification of the original report in this case petitioners point out that the observance of the mileage scale prescribed by the Commission would destroy such relationship as now obtains between the rates from the various coal fields competing for the sale of coal in Mississippi Valley territory and prevent the establishment of uniform differentials, inasmuch as the differentials would vary in proportion to the variations in distances from the several mines, and that the same result would follow the application of any mileage scale of rates. It is also urged that observance of the mileage scale prescribed would compel radical reductions in their present rates to points in the Mississippi Valley and that the resulting rates would be lower than those obtaining generally in southeastern territory and other sections of the United States. They ask, therefore, that this order be modified so as to permit the revision of the present rates on a somewhat higher basis than is now authorized, and in such a way as to bring about a more appropriate relationship between the rates from competing fields. They have submitted with this petition a statement prepared by B. J. Rowe, coal traffic manager of the Illinois Central Railroad Company, showing the rates proposed from basing groups in Illinois, Kentucky, and Alabama, hereinafter referred to as Rowe's Exhibit No. 1, which it is asserted will bring about a more harmonious and equitable relation of rates between the several competing mines than it would be possible to obtain by strict adherence to the mileage scale of rates prescribed by the Commission, and have asked that they be allowed such measure of relief from the fourth section as will be necessary to permit them to establish the rates shown in this statement.

There is such a multiplicity of rates and routes involved that we shall not undertake to recite all of them, but shall confine our discussion to the proposed changes to points on the Illinois Central, which are typical of the changes proposed to points on other lines under the general readjustment. There are a few special cases where conditions are shown to be somewhat different from those generally prevailing in Mississippi Valley territory, and these will be taken up separately hereafter.

The following tables show the distances and present and proposed rates from mines in Illinois and Kentucky on the Illinois Central, from Brilliant, Ala., on the Illinois Central, and from group 4 Southern Railway mines in Alabama to New Orleans and intermediate points on the Illinois Central Railroad.

Except where otherwise stated, rates are in cents per ton of 2,000 pounds.

From Illinois and Kentucky mines.

To—	Average distance.	Present rates.	Proposed rates.	Reduc- tions.	Increase.
	<i>Miles.</i>				
Taylor, Miss.....	306				
to		\$1.60	\$1.60		
Grenada, Miss., inclusive.....	344				
Tie Plant, Miss.....	348				
to		1.80	1.70	\$0.10	
Sawyer, Miss., inclusive.....	364				
Winona, Miss.....	367	1.40	1.55		\$0.15
Felts, Miss.....	370				
to		1.80	1.80		
Durant, Miss., inclusive.....	397				
Goodman, Miss.....	405				
to		1.80	1.90		.10
Tongaloo, Miss., inclusive.....	448				
Jackson, Miss.....	455	1.75	1.90		.15
Elton, Miss.....	462				
to		1.95	2.00		.05
Haslehurst, Miss., inclusive.....	480				
Martinsville, Miss.....	494				
to		1.95	2.10		.15
Wesson, Miss., inclusive.....	501				
Montgomery, Miss.....	505				
to		2.00	2.10		.10
Brookhaven, Miss., inclusive.....	509				
Cold Springs, Miss.....	517	2.10	2.10		
Bogue Chitto, Miss.....	520				
to		2.10	2.20		.10
Chatawa, Miss., inclusive.....	546				
Oxyta, Miss.....	550				
to		2.10	2.30		.20
Independence, La., inclusive.....	578				
Tieklaw, La.....	580				
to		2.10	2.40		.30
La Branch, La., inclusive.....	619				
Kenner, La.....	628	2.00	2.20		.20
New Orleans, La.....	639	1.65	1.65		

From Brilliant, Ala., on the Illinois Central Railroad, and Southern Railway group 4 mines in Alabama.

To—	From Brilliant.			From Southern Ry. group 4.		
	Miles.	Present rates.	Proposed rates.	Miles.	Present rates.	Proposed rates.
Ackerman, Miss.....	120	\$1.45	¹ \$1.30	139	(²)	(²)
McCool, Miss.....	134			153		
to		1.80	¹ 1.35		(²)	(²)
Kosciusko, Miss., inclusive.....	152			171		
MeAdams, Miss.....	158	1.80	¹ 1.45	177	(²)	(²)
Boyette, Miss.....	167	1.80	¹ 1.50	186	(²)	(²)
Goodman, Miss.....	175			194		
to		1.80	¹ 1.60		(²)	(²)
Tongaloo, Miss., inclusive.....	218			237		
Jackson, Miss.....	225	1.45	¹ 1.60	243	(²)	(²)
Elton, Miss.....	232			260		
to		1.95	¹ 1.70		(²)	(²)
Haslehurst, Miss., inclusive.....	259			277		
Martinsville, Miss.....	264			282		
to		1.95	¹ 1.80		(²)	(²)
Wesson, Miss., inclusive.....	271			289		
Montgomery, Miss.....	275	2.00	¹ 1.80	293	(²)	(²)
Brookhaven, Miss.....	279	2.00	¹ 1.80	297	(²)	(²)
Cold Springs, Miss.....	287	2.10	¹ 1.80	305	(²)	(²)
Bogue Chitto, Miss.....	290			308		
to		2.10	¹ 1.90		(²)	(²)
Chatawa, Miss., inclusive.....	316			334		
Oxyta, Miss.....	320			338		
to		2.10	¹ 2.00		(²)	(²)
Independence, La., inclusive.....	346			364		
Tieklaw, La.....	350			368		
to		2.10	2.10		(²)	(²)
La Branch, La., inclusive.....	389			407		
Kenner, La.....	398	2.00	¹ 1.90	416	(²)	(²)
New Orleans, La.....	409	1.40	1.40	427	(²)	(²)

¹Reduction.²Same as from Brilliant.³Increase.

S.P.C.C.

It will be observed that under the proposed readjustment rates from mines in Illinois and Kentucky to points south of Sawyer, Miss., will be increased from 5 to 30 cents per ton, while the rates from Alabama mines will be reduced from 10 to 45 cents, except at Jackson, where an increase of 15 cents is proposed. The latter increase has been authorized by amended order in *Coal and Coke Rates in the Southeast*, 35 I. C. C., 187. On the whole, it may be said that the general result of the proposed readjustment would be the same as reflected by the above tables.

The following is a recapitulation prepared by the carriers of changes in Rowe's Exhibit No. 1 and the extent of the same in cents per ton:

District.	Cents per ton.											Total.
	5	10	15	20	25	30	35	40	45	50	55	
From Alabama:												
Reductions.....	112	243	143	232	70	122	67	19	20	2		1,030
Increases.....	33	43	14	39	9		2					140
No change.....												442
From Illinois and Kentucky:												
Reductions.....	5	50	37	36	9	20	13					170
Increases.....	109	262	120	275	22	98	11	24			1	922
No change.....												520

Total stations shown in check, 1,612.

It will be seen that the changes made in the rates from Alabama are in the main reductions, while those made in rates from Illinois and Kentucky are mostly increases.

It will be further observed from the above tables that at the present time rates from Illinois, Kentucky, and Alabama mines are on a parity except to competitive points such as Winona, Jackson, and New Orleans. Under the proposed adjustment there will be a differential generally of about 30 cents in favor of the Alabama mines. In a few cases in northwestern Mississippi, where the distance from Illinois and Kentucky is approximately the same as the distance from the Alabama mines, there is no differential, and to points on the Yazoo & Mississippi Valley north of the Southern Railway in Mississippi the differentials in favor of Alabama are from 5 to 20 cents. To the greater part of the territory south of the Southern Railway in Mississippi, however, the differential in favor of the Alabama mines is 30 cents or more. The proposed rates are generally higher than the rates carriers are authorized to maintain to intermediate points under the scale prescribed in the original report. This scale was based largely upon rates found to be reasonable by the Commission in *Coal and Coke Rates in the Southeast*, *supra*, and with a view to establishing as reasonable a relationship of rates between the various points in this territory as it was possible

to arrive at on the record before us, and with due regard to the findings of the Commission in the above-mentioned case. The carriers in their petition for a modification of the original report in this matter maintain that observance of this scale would require the establishment of unreasonably low rates, and presented numerous exhibits of rates for similar distances between other points in southeastern territory and between points in other sections of the United States in comparison with which the rates in the scale are shown to be low. These comparisons, where they consist of rates applying in territories where the transportation conditions are substantially similar to those prevailing in Mississippi Valley territory, are entitled to consideration, and they have been given full weight in the determination of this matter. We have, however, more appropriate comparisons in the rates in the same territory and to many of the points involved herein, which have been passed on and found reasonable by this Commission, and these must be given precedence over any comparative statements of rates between points in other sections of the country. By amended order in *Coal and Coke Rates in the Southeast, supra*, we authorized some additional increases to certain points in this territory, and it appears, after careful examination of the statement of proposed rates to points south of the Memphis division of the Southern Railway, that except in respect to some of the rates to points south of the line of the Mississippi Central where radical increases are proposed, the proposed readjustment will result in rates substantially in line with the increases authorized under the above-mentioned case.

Upon further consideration of this matter, and in view of the peculiar conditions obtaining in this territory by reason of the rivalry of carriers serving competing mines in the states of Illinois, Kentucky, and Alabama, and of the desirability of establishing rates relatively adjusted from the several groups on a reasonably fair and equitable basis, we are of opinion that our previous order in this case should be modified so as to permit the revision of the present rates as proposed by these applicants, except as hereinafter provided. The majority of the changes proposed involve reductions in the present rates. There are also a number of increases. However, in a revision as extensive as that to be made in this case, which involves practically all rates on coal in the territory lying between the Mississippi River and a line drawn from Paducah, Ky., through Paris and Milan, Tenn., to Jackson, Tenn., and thence to Mobile, Ala., along the line of the Mobile & Ohio Railroad to Mobile, Ala., and extending from the Ohio River on the north to the Gulf of Mexico on the south, where so many inconsistencies and discriminations have existed, there must necessarily in a readjustment be changes

in both directions, upward as well as downward. It should be understood, however, that we do not finally approve these increases. We merely find that the relationship proposed appears to be a reasonable one and that such measure of relief from the long-and-short-haul provision of the fourth section as is necessary to establish that relationship should be granted. All of the rates established under the permission herein granted are subject to complaint, investigation, and correction if they conflict with any provision of the act.

The exceptions referred to above apply in the main to the proposed rates to points south of the Alabama & Vicksburg Railway exclusive of points on the lines of the Gulf & Ship Island, Mississippi Central, and New Orleans Great Northern Railroads. Typical examples of these rates are shown in the above tables of rates to points on the Illinois Central.

It will be noted that it is proposed to increase the rates from mines in Illinois and Kentucky to stations south of Jackson, Miss., from 5 to 30 cents per ton, so that these rates, instead of exceeding rates at New Orleans by from 30 to 45 cents per ton, as at present, would exceed the New Orleans rate by from 35 to 75 cents per ton. We can not give approval to the relative adjustment of rates that would be produced by the establishment of the proposed basis. Authority to make the general revision proposed will therefore be granted upon the condition that rates to intermediate points, except stations on the lines of the Gulf & Ship Island, Mississippi Central, and New Orleans Great Northern, shall not exceed the following scale:

	Per net ton.
For distances not exceeding 300 miles, not more than.....	\$1. 65
Exceeding 300 miles, but not exceeding 325 miles.....	1. 70
Exceeding 325 miles, but not exceeding 350 miles.....	1. 75
Exceeding 350 miles, but not exceeding 400 miles.....	1. 80
Exceeding 400 miles, but not exceeding 450 miles.....	1. 90
Exceeding 450 miles, but not exceeding 500 miles.....	2. 00
Exceeding 500 miles, but not exceeding 550 miles.....	2. 10
Exceeding 550 miles, but not exceeding 600 miles.....	2. 20
Exceeding 600 miles, but not exceeding 650 miles.....	2. 25

Many of the rates proposed by petitioners to intermediate points as set forth in Rowe's Exhibit No. 1, hereinbefore referred to, are lower than this scale. This exhibit is worked out in great detail and shows the proposed rates, on a group basis, to practically all points in Mississippi Valley territory from basing groups of mines in the states of Illinois, Kentucky, and Alabama. It is, therefore, a voluminous document which we shall not reproduce in this report. However, the petitioners will be required by the order entered herein to establish rates to intermediate points not exceeding those proposed in the said exhibit. The distance scale is intended for general appli-

cation, and is used only because the large number of rates and routes involved make it impracticable to prescribe maximum rates to all intermediate points by any other method.

RATES TO POINTS ON THE MISSISSIPPI CENTRAL, GULF & SHIP ISLAND, AND NEW ORLEANS GREAT NORTHERN.

In the original report the scale of rates prescribed to the intermediate points applied to all lines in Mississippi Valley territory, including the carriers named above. These carriers are also parties to the joint application for modification of this scale, but in addition each of them has filed a special petition for further relief from the fourth section. In addition to the general grounds upon which further relief is prayed in the joint petition, these applicants assert that they are comparatively new lines operating through sparsely populated and largely undeveloped sections of country, and that they do not reach any of the mines from which coal is shipped to Mississippi Valley territory and have no part in the establishment of rates to competitive points, but are forced to meet such rates as are made via the older and stronger competitors in order to obtain a small part of the coal traffic to the competitive points.

The following tables show rates from group 4 Southern Railway mines in Alabama to most of the competitive points reached by these lines and the rates they desire to maintain to intermediate points:

RATES FROM GROUP 4 SOUTHERN RAILWAY MINES TO MISSISSIPPI CENTRAL STATIONS VIA HATTIESBURG, MISS.

To—	Miles.	Present rates.	Proposed rates.	Reductions.	Increases.
Breland, Miss.....	271	\$2.15	\$1.95	\$0.20	.....
to Carlos, Miss., inclusive.....	343				
Zetus, Miss.....	354				
to Kirby, Miss., inclusive.....	384	2.35	2.05	.30	.....
McMillan, Miss.....	394				
to Washington, Miss., inclusive.....	406	2.35	2.05	.30	.....
St. Catharine, Miss.....	410				
Natchez, Miss. ¹	414	1.60	¹ 1.50	.10	.....

¹ Water competitive point.

¹ Rate via Y. & M. V.

FROM SOUTHERN RAILWAY GROUP 4 MINES VIA JACKSON, MISS., TO GULF & SHIP ISLAND RAILROAD STATIONS.

Plain, Miss.....	256	\$1.95	\$1.80	\$0.15	.....
to Riverside, Miss., inclusive.....	338				
Hattiesburg, Miss.....	340				
Palmer, Miss.....	344	1.50	¹ 1.60	.....	\$0.10
to Brooklyn, Miss., inclusive.....	361				
Maxie, Miss.....	367	1.95	1.95	.....	.....
Bayou Bernard, Miss., inclusive.....	407				
Gulfport, Miss.....	411	1.40	¹ 1.40	.....	.....

¹ Rate via New Orleans & Northeastern.

¹ Rate via Louisville & Nashville.

FROM SOUTHERN RAILWAY GROUP 4 MINES VIA SOUTHERN RAILWAY, COLUMBUS, MOBILE, & OHIO, MERIDIAN, ALABAMA & VICKSBURG, AND JACKSON, TO STATIONS ON THE NEW ORLEANS GREAT NORTHERN RAILROAD.

To—	Miles.	Present rates.	Proposed rates.	Reductions.	Increases.
Elton, Miss.....	281	\$1.95	\$1.70	\$0.25	.....
Bernard, Miss.....	289	1.95	1.80	.15	.....
to Wanilla, Miss, inclusive.....	323				
Babin, Miss.....	326	1.95	1.90	.05	.....
to Columbia, Miss, inclusive.....	360				
Jamestown, Miss.....	361	2.10	1.90	.20	.....
to Twin, La., inclusive.....	374				
Trest, La.....	376	2.10	2.00	.10	.....
to Rio, La., inclusive.....	396				
Cosum, La.....	398	2.10	2.10	.....	.....
to Graham, La., inclusive.....	410				
Florenville, La.....	416	2.90	2.10	.....	\$0.10
Slidell, La.....	426	1.40	1.40	.....	.....

¹ Rate via New Orleans & Northeastern.

The principal competitors of applicants' lines are the Illinois Central and New Orleans & Northeastern, and below is a statement showing comparative statistics for the year ending June 30, 1915, of these three applicants and the competing lines named:

	I. C.	N. O. & N. E.	M. C.	N. O. G. N.	G. & S. L.
Average miles operated.....	4,770.03	¹ 195.90 ² 203.73	164	284.60	297.56
Freight density, tons.....	¹ 1,578,952	1,997,232	101,707	280,589	259,913
Passenger density.....	138,546	111,973	31,225	51,975	36,919
Average distance freight hauled, miles.....	² 240.25	148.11	34.02	76.90	67.94
Average rate per ton per mile, mills.....	5.91	6.45	32.08	14.7	15.9
Average freight-train load, tons.....	² 444.58	460.72	189.43	346.49	305.48
Operating revenues per mile of road.....	\$13,021.20	\$17,112.00	\$4,704.00	\$5,622.00	\$5,308.00
Total operating expenses per mile of road.....	\$10,057.63	\$12,970.00	\$3,061.00	\$3,693.00	\$3,612.00
Net operating revenues per mile of road.....	\$2,963.57	\$4,142.00	\$1,643.00	\$1,929.00	\$1,697.00
Operating ratio, per cent.....	77.24	75.80	65.07	65.70	65.00

¹ Freight.

² Passenger.

³ Revenue freight.

It will be seen from the above figures that in every traffic and financial essential the applicants are considerably weaker than the lines with which they compete. The conditions reflected by this comparison are proper matters for consideration in determining the measure of relief that should be afforded the applicants in meeting the rates in effect via their stronger competitors, and entitle them to a greater measure of relief than would be granted were conditions more equal. It will be observed that many of the proposed rates to intermediate points are substantially less than the present rates.

Upon further consideration of the applications of these three carriers in the light of the additional facts submitted we are of opinion

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and find that the original order should be modified and that these applicants should be allowed to establish rates on the basis proposed in Rowe's Exhibit No. 1 or as modified by their individual applications, for a period of two years, and the original order will be amended accordingly.

GREENVILLE AND VICKSBURG, MISS.

In the original report, carriers were authorized to continue rates from mines in Illinois and Kentucky to Greenville and Vicksburg, Miss., lower than to intermediate points to meet the conditions created at those points by the movement of water-borne coal from Pittsburgh district and western Kentucky. At the hearing applicants stated that the rate to Greenville from the basing groups of Alabama mines which at that time was \$1.10 would be increased to \$1.25. The rates to intermediate points did not exceed that figure. Fourth section relief was, therefore, unnecessary and none was granted. It is now proposed to increase the rates from group 4 on the Southern Railway in Alabama to intermediate points as follows, with corresponding increases from related groups, and carriers ask to be allowed to make these increases and to continue the rate of \$1.25 at Greenville to meet the water competition at that point:

From group 4 Southern Railway mines.

To Southern Railway in Mississippi stations.	Miles.	Present rates.	Proposed rates.	Increases.
Cressona, Miss.....	167	\$1.25	\$1.35	\$0.10
to Moorhead, Miss., inclusive.....	214			
Baird, Miss.....	219	1.25	1.45	.20
to Stoneville, Miss., inclusive.....	240			
Greenville, Miss.....	249	1.25	1.25	.....

The rate from Alabama mines to Vicksburg at the time of the hearing was \$1.45, and the rate to intermediate points, except to Jackson, Miss., was \$1.60. Applicants stated that the Vicksburg rate and the Jackson rate would be increased to \$1.60, which would remove the fourth section departure, and no relief was granted. However, these proposed increases were held unreasonable in *Coal and Coke Rates in the Southeast, supra*. By supplemental order applicants have been authorized to increase the rate to Jackson to \$1.60. Jackson is 49 miles east of and intermediate to Vicksburg, but applicants did not ask for a modification of the order entered in *Coal and Coke Rates in the Southeast* in so far as the rate to Vicksburg was concerned, because, they asserted, that the competition of the water

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carriers at that point is such as to require the continuance of the rate of \$1.45, and they ask that they be allowed to continue this rate while charging the rate of \$1.60 per ton to Jackson and other intermediate points, as shown in the following table:

Rates from group 4 Southern Railway mines in Alabama to stations on the Alabama & Vicksburg Railway.

To—	Average distance (miles).	Present rates.	Proposed rates.	Increase.
Newton, Miss.....	210	\$1.45	\$1.45	.....
Lawrence, Miss.....	214	1.45	1.60	\$0.15
Lake, Miss.....	220	1.45	1.60	.15
Forest, Miss.....	228	1.45	1.60	.15
Raworth, Miss.....	234	1.45	1.60	.15
Martin, Miss.....	239	1.45	1.60	.15
Clarksburg, Miss.....	244	1.45	1.60	.15
Pelahatchie, Miss.....	248	1.45	1.60	.15
Rankin, Miss.....	255	1.45	1.60	.15
Brandon, Miss.....	260	1.45	1.60	.15
Greenfield, Miss.....	264	1.45	1.60	.15
Pearson, Miss.....	269	1.45	1.60	.15
Jackson, Miss.....	270	1.45	1.60	.15
Dixon, Miss.....	279	1.60	1.60	.....
to Newman, Miss., inclusive.....	311			
Vicksburg, Miss.....	319	1.45	1.45	.....

In the original report we found that the movement of water-borne coal to Greenville and Vicksburg was in such volume as to influence the rates of the rail lines to these points, and relief was granted lines from Illinois and Kentucky mines to continue lower rates to those cities than to intermediate points on this account. Similar relief would have been granted the lines from the Alabama mines except for the reasons above stated.

The rates which applicants desire to continue to the river points are low rates, and rates to intermediate points, except points on the Alabama & Vicksburg east of Greenfield, Miss., are not unreasonable either relatively or *per se*. Under the circumstances, therefore, the applicants herein are entitled to relief in these situations, and our original order will be amended so as to permit the establishment of rates as proposed, except as hereinafter noted. It will be observed that it is proposed to charge higher rates to points on the Alabama & Vicksburg Railway west of Newton, Miss., than to Vicksburg, and that to Jackson and points east thereof the proposed rate is 15 cents per ton higher than the present rate. The rates proposed to some of these points east of Jackson are higher than rates for like distances to points similarly situated on other lines. We can not, therefore, approve this relationship, and authority to continue the rate of \$1.45 to Vicksburg will be granted upon condition that rates from Southern Railway group 4 mines in Alabama and groups tak-

ing the same rates to these points intermediate thereto shall not exceed those shown in the following table:

Rates from Southern Railway group 4 mines in Alabama.

To—	Per net ton.	To—	Per net ton.
Lawrence, Miss.....	\$1.45	Rankin, Miss.....	\$1.55
to		Brandon, Miss.....	1.55
Merton, Miss., inclusive.....		Greenfield, Miss.....	1.60
Clarksburg, Miss.....	1.50	Pearson, Miss.....	1.60
to		to	
Polkatchie, Miss., inclusive.....		Newman, Miss., inclusive.....	

SLIDELL, LA.

Slidell, as pointed out in the original report, is located on an arm of Lake Pontchartrain, 26 miles north of New Orleans. The rates to Slidell from the mines in the several states referred to above have been made the same as to New Orleans. In justification of this situation carriers asserted that this basis of rates was necessary in order to meet the competition created by the movement of water-borne coal to Slidell, but at the hearing no testimony in support of this contention was introduced, and authority to continue the lower rates to Slidell than to intermediate points was denied. It now appears that there is an actual movement of coal by water to this point from mines in Alabama and that it is necessary for the carriers to maintain the New Orleans basis of rates to this point in order effectively to meet the competition of water lines. The original order in this case will therefore be amended so as to authorize the same relief in respect to rates to Slidell as to New Orleans, La.

POINTS NORTH OF THE MEMPHIS DIVISION OF THE SOUTHERN RAILWAY.

In the original report we authorized the carriers serving mines in eastern Kentucky and Tennessee, and other lines leading to Memphis not specifically dealt with in the report, to continue lower rates to Memphis than to intermediate points provided that the rates to intermediate points not more than an average of 175 miles from the basing groups of mines should not exceed \$1.25 per ton, and that rates to points more than 175 miles distant should not exceed \$1.25 by more than 5 cents per ton for each additional 25 miles or fraction thereof.

Under the general relief granted circuitous lines, carriers whose lines were not less than 15 per cent longer than the direct lines to Jackson, Martin, McKenzie, Union City, and other junction points

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in Tennessee were authorized to meet the rates of direct lines and to maintain higher rates to intermediate points, providing the rates to intermediate points did not exceed the scale hereinbefore referred to. Certain of the carriers serving Memphis and the junction points above mentioned now ask for authority to maintain higher rates to points intermediate thereto than were authorized in the original report, and in some cases authority is sought by lines whose routes are less than 15 per cent longer than the direct routes to the above junction points to charge higher rates to intermediate points. The rates prescribed as the maximum rates that may be charged to points intermediate to Memphis compare favorably with rates prescribed by the Commission in *Coal and Coke Rates in the Southeast, supra*, from many of the same mines to junction points in Tennessee for hauls of substantially the same length, and are in harmony with rates prescribed by the Commission in other cases involving rates in the same territory. No good reason appears, therefore, why we should modify our original finding in respect to these rates, and no modification will be made.

To Jackson and other junction points in Tennessee and Kentucky, however, we are of the opinion that carriers whose lines are not less than 15 per cent longer than the direct lines from the same or competing mines in Illinois, Kentucky, and Tennessee should be allowed authority to meet the rates of the direct lines and to maintain rates to intermediate points on the same basis that they have been authorized to maintain rates to points intermediate to Memphis. That is to say, that to points not more than 175 miles from the basing groups of mines not more than \$1.25 per ton, and 5 cents additional for each additional 25 miles or fraction thereof. We adhere to our original decision that no sufficient justification has been shown for granting relief to carriers whose lines are less than 15 per cent longer than the direct lines.

HICKMAN, KY.

Hickman is situated on the Mississippi River just north of the Kentucky-Tennessee state line. It is the western terminus of the main line of the Nashville division of the Nashville, Chattanooga & St. Louis Railway, which extends west from Nashville, Tenn. The present rate from mines in eastern Tennessee on the Nashville, Chattanooga & St. Louis is \$1.25 per ton to Hickman. Rates to intermediate points grade up to \$1.50 per ton. At the hearing the Nashville, Chattanooga & St. Louis stated that the Hickman rate would be increased to \$1.50, thereby removing the fourth section departure. Fourth section relief was accordingly denied. The applicant now asks that it be allowed to continue the rate of \$1.25 and to maintain

higher rates to intermediate points. In justification, it is urged that Hickman is a river point, but it is admitted that there has been no movement of coal by water to Hickman for many years and that there are no actual competitive conditions prevailing at Hickman which require the maintenance of the \$1.25 rate. The mere fact that Hickman is a river point is not sufficient to justify lower rates to that point than to intermediate stations, and the relief prayed will therefore be denied.

KOSCIUSKO, MISS.

There were considered in the original report in this proceeding numerous complaints attacking rates on coal to many of the intermediate points involved. Our findings in these cases have been complied with except with respect to rates from Brilliant and Blocton, Ala., to Kosciusko, involved in complaint No. 6311, *Miller v. I. C. R. R. Co.* In this case we prescribed as reasonable for the future a rate of \$1.25 per ton from the points named to Kosciusko. The defendants asked that this be changed and proposed in lieu thereof a rate of \$1.35 per ton. Our original finding as to the reasonableness of this rate was based upon the fact that the existing rates to Kosciusko were unreasonable in comparison with rates found reasonable by the Commission in *Coal and Coke Rates in the Southeast*, *supra* to more distant points to which Kosciusko is intermediate. By supplemental order in that case we have permitted certain increases in rates to these points, including Jackson, Miss., to which point the rate will be increased from \$1.45 to \$1.60. The average distance to Jackson from Brilliant and Blocton is 248 miles, and to Kosciusko, 175 miles. Upon consideration of all the facts of record and of the additional increases permitted by the Commission in rates to points in this territory, we are of opinion that our original finding in this matter that the rate from Brilliant and Blocton to Kosciusko should not exceed \$1.25 should be modified and a maximum rate of \$1.35 be prescribed in lieu thereof.

Appropriate orders will be entered.

No. 6783.¹

DRAKE MARBLE & TILE COMPANY
v.
NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY
ET AL.

Submitted October 6, 1915. Decided May 9, 1916.

1. Rates on marble from New York, N. Y., and Baltimore, Md., to St. Paul, Minn., and from Knoxville, Tenn., and neighboring points to St. Paul and Kansas City, Mo., not found unreasonable or unjustly discriminatory.
2. Departures from rule of the fourth section so far as not already corrected are authorized.
3. Prayer for joint rates on marble from Knoxville to St. Paul and Kansas City denied, the present through rates based upon the Ohio and Mississippi river combinations not appearing to be open to valid objection.

Lightner & Young and Alfred C. Killmer for complainant.

Butler & Mitchell for intervener.

F. L. Ballard for eastern trunk lines.

R. Walton Moore and M. Carter Hall for Southern Railway Company.

E. D. Mohr for Louisville & Nashville Railroad Company.

Henry J. Hart for New York, New Haven & Hartford Railroad Company.

Joseph B. Stewart and R. F. Waterhouse for New York, Ontario & Western Railway Company.

W. D. Burr for Chicago, St. Paul, Minneapolis & Omaha Railway Company and Chicago & North Western Railway Company.

J. G. Morrison for Chicago Great Western Railroad Company.

Frank E. Otis for Chicago, Milwaukee & St. Paul Railway Company.

George P. Lyman for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the preparation of stone and marble for interior work and in the construction of interior work

¹ The proceeding also embraces the complaint in—No. 6827, Same *v.* Southern Railway Company et al.; and Portions of Fourth Section Applications No. 777, filed by the New York, New Haven & Hartford Railroad Company, and No. 1548, filed by the Southern Railway Company.

of marble, terrazzo, tile, etc., with its principal place of business at St. Paul, Minn. By complaints, filed March 30 and April 20, 1914, it alleges that the following rates imposed by defendants were unreasonable, unjustly discriminatory, and in violation of the fourth section of the act: 33 cents per 100 pounds on rough marble blocks from New York, N. Y., Jersey City, N. J., and Weehawken, N. J., to St. Paul; 30 cents on rough marble blocks from Baltimore, Md., to St. Paul; 29 cents and 31 cents on rough marble blocks from Knoxville, Tenn., and near-by points in Tennessee to St. Paul; 34 cents on rough marble blocks and sawed and sand-rubbed marble slabs from Knoxville to Kansas City, Mo. Reparation is asked on specified shipments and the establishment of joint rates on the articles named from Tennessee points to St. Paul. Some of the shipments were delivered more than two years before the complaint was filed. The claims involving the rates from New York were presented to the Commission informally February 6, 1913; the claims on the shipments from Tennessee points June 28, 1913. The C. H. Young Company, a corporation engaged in the same business as complainant at the same place, intervened, asking for reparation on numerous shipments to St. Paul from New York, New York rate points, Baltimore, and points in Tennessee.

The record in Docket No. 6783 shows 110 carloads of marble to St. Paul imported by complainants and interveners through New York harbor points, and 7 through Baltimore; that in Docket No. 6827, 155 carloads of rough marble moved from Tennessee to St. Paul, 14 carloads of sawed marble or sand-rubbed slabs from Knoxville to Kansas City. The quantities shipped aggregated about 6,500 tons from Tennessee and more than 3,400 tons from foreign countries.

RATES FROM NEW YORK AND BALTIMORE.

The shipments from New York harbor points to St. Paul consisted of large blocks of imported marble, from Italy principally, which in all but a few instances moved directly from ship side. Lighterage in or across the harbor was necessary for every shipment, and the 33-cent rate charged from New York rate points included lighterage not exceeding 3 cents per 100 pounds. This rate and the 30-cent rate applicable from Baltimore were in effect over all of the standard lines for more than five years prior to January 15, 1915, when increases following *The Five Per Cent Case*, 32 I. C. C., 325, became effective. Prior to January 1, 1910, the New York, Ontario & Western Railway, as the initial line in what was known as a "differential route," maintained a 26.5-cent rate from certain New York rate points, but this rate was increased January 1, 1910, to 31 cents. On March 15, 1910, the New York, Ontario & 39 I. C. C.

Western abandoned its differential rate altogether, and since that time a single rate has applied over all lines. The present rates to St. Paul on marble, rough, not sawed, dressed, polished, lettered, or figured, minimum 30,000 pounds to such points as Chicago and 40,000 pounds beyond, are 34.3 cents from New York rate points and 31.3 cents from Baltimore.

Complainant alleges that the 33-cent joint rate from New York exceeded the aggregate of the intermediate rates from Jersey City to Easton, Pa., and from Easton to St. Paul. A class rate of 7.5 cents applied from Jersey City to Easton, a rate of 23 cents from Easton to St. Paul. But the tariff naming the 7.5-cent rate also provided a rate of 10.5 cents from the New York harbor or lighterage points in controversy, including Jersey City, which rate, added to the 23-cent rate applicable beyond Easton, gave a combination rate of 33.5 cents. A rate of 9 cents was maintained by the Erie Railroad from certain Jersey City yards to Bridgeburg, Ontario, which complainant combines with an alleged rate of 15 cents from Bridgeburg to Chicago and a rate of 8 cents from Chicago to St. Paul. But the 9-cent component to Bridgeburg was not available for shipments of imported marble lightered in New York harbor, as the tariff item quoted by complainant shows a 12-cent rate to Bridgeburg from New York harbor points, including Jersey City. Complainant also urges combinations of intermediate rates to and from Amherst, Ohio, and Chicago, but the initial rates used in the combinations applied only from Jersey City, and did not apply on marble. The tariff cited names marble among the commodities given special rates, but the rates cited by complainant applied specifically on "stone, building and granite." No rates are named in the tariff on marble from Jersey City to Chicago. A rate of 6 cents applied on marble from Baltimore to Cockeysville, Md., a rate of 22 cents from Cockeysville to St. Paul. But these rates applied by way of the Pennsylvania Railroad's lines, as originating carriers, while the shipments from Baltimore were moved out of Baltimore by the Baltimore & Ohio Railroad, and did not pass through Cockeysville.

The rates cited by complainant from Jersey City to Easton and from Baltimore to Cockeysville were and are class rates, while the rates from Easton and Cockeysville to St. Paul were commodity rates established to enable marble quarried at these points to compete with marble quarried in New England. Defendants assert that the rates beyond Easton and Cockeysville were unduly low and that few shipments moved under them. They have since been increased. The present rates from Jersey City to Easton and from Easton to St. Paul aggregate 40.2 cents; the rates from Baltimore to Cockeysville and from Cockeysville to St. Paul, 37.6 cents. Agent C. C. McCain

asks by Fourth Section Application No. 1625, among other things, for leave to continue rates on marble from Baltimore to St. Paul higher than the aggregate of the rates to and from Cockeysville, but was not heard with the complaints.

Complainant further compares the 33-cent rate from New York with a rate of 25 cents from certain Vermont and Massachusetts marble producing points, with a rate of 30 cents from Rutland, Vt., and points taking Rutland rates and with a rate of 29 cents from Ashley Falls, Lee, Sheffield, and West Stockbridge, Mass. The rates contemporaneously in effect to Chicago were 25 cents from New York, 17 cents from Vermont, 20 cents from Rutland and grouped points, 21 cents from Ashley Falls and the other Massachusetts points named.

The rate from Massachusetts quarries to St. Paul applied through Waverly Transfer and Jersey City, N. J., in connection with the Pennsylvania and the Lehigh Valley railroads. Both routes require barge transfer across New York harbor. Defendants contend that both routes are competitive and that an increase in the rates over them from Massachusetts points to the level of the rates applicable from New York harbor would merely deprive the Pennsylvania and the Lehigh Valley of a part of the traffic. Routing through Waverly Transfer and Jersey City is not exclusive. Other more direct routes are open to which no objection has been made. That portion of New York, New Haven & Hartford Railroad Company Fourth Section Application No. 777 which seeks authority for the continuance of rates from Ashley Falls; Lee, Sheffield, and West Stockbridge through Waverly Transfer and Jersey City to St. Paul, Minneapolis, and Minnesota Transfer, Minn., lower than the rates contemporaneously in effect to the same points from Waverly Transfer, Jersey City, and other intermediate points was set for hearing with the complaint in Docket No. 6783. The justification offered is that the rates on marble from New York to Chicago and intermediate points have always been on a class basis; that the rates on rough marble blocks are the lowest class rates for the traffic; that the rates to St. Paul and other western points are composed of these class rates to Chicago and the rates imposed by the western carriers beyond; that the rates on marble from Massachusetts quarries to Chicago and the west are made in competition with the rates from quarries in Vermont; that the rates from Vermont quarries to Chicago and the west are made by a Canadian differential route, are commodity rates lower than class rates, and are extremely low for the service performed; that the short-line route from Massachusetts quarries to Chicago and the west lies through Albany, N. Y., the route through Jersey City being approximately 20 per cent longer, the distance from Jersey City to

20 I. C. C.

Chicago being longer than the total distance from Massachusetts quarries over the short-line route; that the Jersey City route has been practicable despite the low rate applicable over it because the rate pays something more than the actual cost of transportation; that no one would be benefited by closing the Jersey City route because the route through Albany and other routes would still be available.

Imported rough marble blocks could and still can be shipped from New York rate points to Kansas City, Mo., at a rate of 29 cents per 100 pounds. This rate is named in a proportional import tariff of the New York Central Railroad covering classes and commodities from New York rate points to Missouri River points. It is the class E rate, western classification, and applies to Atchison, Kansas City, and St. Joseph. Higher rates apply to points farther north: 34 cents to Sioux City, Iowa; 36 cents to Sioux Falls, S. Dak.

The official classification rates rough marble blocks sixth class, minimum 30,000 pounds. The sixth-class rate to St. Paul from New York rate points during the period in issue was 38 cents, and is now 39.3. The 33-cent commodity rate attacked carries a minimum of 36,000 pounds.

We find that the 33-cent rate assailed on marble rated sixth class in official classification was not unreasonable or unjustly discriminatory against complainant or intervener, and that defendants may continue to maintain rates on marble from Ashley Falls, Lee, Sheffield, and West Stockbridge through Waverly Transfer and Jersey City to St. Paul, Minneapolis, and Minnesota Transfer, Minn., lower than the rates contemporaneously maintained by them on like traffic from Waverly Transfer and Jersey City.

RATES FROM TENNESSEE.

The shipments from Tennessee moved to Kansas City and St. Paul. The shipments to Kansas City originated at Knoxville and consisted of rough sawed or dressed marble, marble slabs, and marble tile, rated class C in western classification. Most of the shipments to St. Paul consisted of rough quarried marble blocks and marble spawls, rated class E in western classification. No joint rates applied or apply on marble from Tennessee points to either Kansas City or St. Paul. Only combination through rates applied, 34 cents from Knoxville to Kansas City and 29 cents to St. Paul, composed of commodity rates on marble, rough quarried blocks, rough sawed, sand rubbed, or slushed slabs, floor tiling, etc., released to a value not exceeding 20 cents per cubic foot, from Knoxville to the Ohio and the Mississippi Rivers and class rates governed by the western classification beyond. The separate components of the rate charged to Kansas City were 19 cents to East St. Louis, Ill., and the 15-cent

class C rate beyond; the components of the rate charged to St. Paul, 12 cents to the Ohio River and the 17-cent class E rate beyond. Some of the shipments involved appear to have been overcharged, others undercharged. If so, appropriate corrections should be made promptly.

Rates 2 cents per 100 pounds higher than the rates applicable from Knoxville applied and apply from Tennessee stations on the Louisville & Nashville south of Knoxville. There is no evidence that this difference is improper, so that only the rates applicable from Knoxville need be discussed. And as all of the shipments to Kansas City were routed by the shippers through St. Louis, Mo., and moved that way it is also unnecessary to discuss the rates applicable to Kansas City by way of other Mississippi River crossings such as Memphis, Tenn.

Complainant cites against the rates assailed, the lower rates published for greater distances from producing points in Massachusetts and Vermont and from Balfour and other points in North Carolina, showing that shipments at the rates from North Carolina might have been moved through Knoxville.

That portion of Southern Railway Fourth Section Application No. 1548 which seeks authority for the maintenance of lower rates on marble from Balfour and other points to Kansas City and St. Paul than from Knoxville to Kansas City and Melrose, Minn., was set for hearing with the complaints. But defendants waive the relief asked. The North Carolina stone tariff cited by complainant was issued to provide for the movement of granite. Defendants stated that the inclusion of marble from Balfour and neighboring points was a clerical error. The application of the rates to marble has been canceled. The only point in North Carolina where marble is quarried is Regal. The rates from Regal are related to the rates from Knoxville and are higher than the rates on granite from Balfour and points in the vicinity of Balfour.

The present rates from Massachusetts and Vermont are substantially higher than the previously published rates which are cited in comparison. The movement is heavy both from New England and from Tennessee, but the transportation conditions from the two territories are substantially different, as has been shown so often that repetition here is unnecessary.

Complainant urges that rates on marble from Tennessee points to St. Paul should be aligned with the rates on granite from points in North Carolina. Defendants reply that these rates on granite were made on the lowest possible basis to enable the quarries in North Carolina to compete with local quarries nearer the western points of destination and in view of the short route by way of Walnut Cove, N. C., and the Norfolk & Western Railway.

Defendants assert that the through rates involved are reasonable and that the local rates used in making them being reasonable, joint through rates from points in Tennessee to St. Paul are unnecessary. The normal method of making rates from Knoxville to northern and western points is said to be combination of the rates to and from the Ohio and Mississippi rivers. Exhibits filed show that there are very few commodity rates from Knoxville to the Ohio River as low as 12 cents per 100 pounds. Common brick takes a rate of 10 cents. Comparisons are made, including the following between the present rates on the marble involved, rates stated in cents per 100 pounds.

From—	To St. Paul, Minn.			To Kansas City, Mo.		
	Miles.	Rates.	Per ton-mile.	Miles.	Rates.	Per ton-mile.
Knoxville, Tenn.....	975	<i>Cents.</i> 29.0	<i>Mills.</i> 5.95	837	<i>Cents.</i> 34.0	<i>Mills.</i> 8.09
Tate, Ga.....	1,140	33.5	5.87	1,061	39.5	7.45
Regal, N. C.....	1,226	33.5	5.46	1,088	37.5	6.89
Denver, Colo.....	574	25.0	5.72	639	25.0	7.89
Rutland, Vt.....	1,326	30.0	4.52	1,346	39.0	5.79

A rate of 30 cents applies on marble from Knoxville to New York City, 736 miles, and to Albany, N. Y., 878 miles.

The 12-cent commodity rate from Knoxville to the Ohio River yields 8.70 mills per ton-mile over the short line to Louisville, Ky., the nearest Ohio River crossing. The 17-cent rate applicable from Louisville to St. Paul yields something less than 5 mills per ton-mile. The commodity rate of 19 cents from Knoxville to East St. Louis, Ill., yields 6.79 mills per ton-mile; the 15-cent class C rate from East St. Louis to Kansas City a little more than 1 cent per ton-mile. Marble is a building material of fairly high grade. The marble slabs, tiling, and like articles shipped by complainant from Knoxville to Kansas City are loaded in box cars with special protection to prevent marring and injury in transit. The partially dressed slabs and tile shipped are much more valuable than the rough marble blocks of the kind that constituted most of the shipments to St. Paul. Defendants assert that the rates in issue have been in effect for a long time and with very little objection to them so far as defendants are aware. They are adjusted with relation to the competition that Tennessee marble encounters in comparison with marble from Vermont, Massachusetts, Georgia, and other points.

We find that the Tennessee rates assailed are not shown to be unreasonable. There is no showing that complainant or intervenor have been subjected to unjust discrimination or that the rates assailed violate the provisions of the fourth section.

Appropriate orders will be entered.

No. 7971.
HENDERSON COTTON MILLS
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos.
679, 2045, AND 2138.

Submitted December 1, 1915. Decided May 24, 1916.

Upon complaint that rates on cotton piece goods from Henderson, Ky., to Boston, Mass., Norwich, Conn., Providence, R. I., New York, N. Y., Baltimore, Md., and other points in trunk line territory, are unreasonable and unjustly discriminatory; *Held*, That the rates complained of are not shown to be unreasonable or otherwise in violation of the act. Complaint dismissed. Fourth section relief denied.

J. V. Norman for complainant.

William Burger for Louisville & Nashville Railroad Company.

R. Walton Moore for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant, a corporation engaged in the manufacture from cotton of unbleached brown sheeting, convertible cloth, and drills, by complaint, filed May 3, 1915, alleges that defendants' rates on its products, termed "cotton piece goods," from Henderson, Ky., to points in trunk line territory are unreasonable and unjustly discriminatory.

It appeared from the complaint that defendants maintained lower rates on cotton piece goods from more distant points in the states of Texas, Mississippi, Alabama, and Tennessee to points in trunk line territory than were contemporaneously in effect from Henderson to the same destinations, and that the traffic might move through Henderson. Accordingly, the portions of F. A. Leland's application No. 679; Illinois Central Railroad Company's application No. 2045; and Mobile & Ohio Railroad Company's application No. 2138, by which authority is sought to continue rates on cotton piece goods from Brenham and Bonham, Tex., and Magnolia, McComb City, Winona, Kosciusko, Stonewall, Meridian, Starkville, and Tupelo, Miss., to Boston, Mass., New York, N. Y., and

other eastern points, lower than the rates contemporaneously maintained on like traffic from Henderson and other intermediate points, were set for hearing with the complaint. It is shown that from the Texas points named to points in trunk line territory there are no joint all-rail rates on cotton piece goods, and that the rail-and-water rates apply only through the port of Galveston. It is further shown that there is no movement of cotton piece goods through Henderson to the east over the Illinois Central or the Mobile & Ohio from the Mississippi points named. The rates, however, apply by way of Henderson.

The cotton mill owned and operated by complainant at Henderson was erected in 1886, and until 1912 its product was disposed of in the middle west. About that time a reduced demand for unbleached cloth caused complainant to seek other markets, and in recent years about 50 per cent of its product has been shipped to Boston, New York, Providence, R. I., Norwich, Conn., Baltimore, Md., and other points in trunk line territory, to be converted, bleached, dyed, and printed in various forms. Complainant has increased its annual production of cloth from 6,615,000 yards in 1886 to 18,678,433 yards in 1912. Since 1912 there has been no increase in the capacity of the mill.

Henderson is situated on the south bank of the Ohio River 12 miles from Evansville, Ind. It is served by the Illinois Central, Louisville & Nashville, and Louisville, Henderson & St. Louis roads. Rule 25 class rates, which are 15 per cent less than second-class rates but not less than third-class rates, apply on cotton piece goods, any quantity, from Henderson to trunk line territory. From points to the south of Henderson, including Nashville, Tenn., to trunk line territory commodity rates apply which are lower than the class rates.

Complainant contends that comparisons of rates and distances from Henderson to points in trunk line territory with rates and distances from all other mill points prove that the rates from Henderson are unreasonable. Its evidence shows that while the distances from Henderson are less than from nearly all competing producing points, the rates on cotton piece goods are higher without exception.

There are cotton mills at Evansville, Cannelton, and Indianapolis, Ind., from which points to trunk line territory rule 25 rates apply on cotton piece goods, but these rates are lower in amount than those from Henderson. Rates from Henderson to the east are adjusted differentially over the rates from Evansville. In *Railroad Commission of Kentucky v. L. & N. R. R. Co.*, 13 I. C. C., 300, we held that the maintenance of higher rates from Henderson than from Evansville to trunk line territory had not been shown to be unreasonable or unjustly discriminatory. The relationship of class and commodity rates

from Henderson and Evansville to central freight association and trunk line territories is also at issue in *Henderson Commercial Club v. I. C. R. R. Co.*, 36 I. C. C., 20, which has been reopened for further hearing.

The following table contrasts the rail-and-water and all-rail rates and the distances as computed by complainant from Henderson and various cotton-mill points in the southern states to Boston. The rates named herein are stated in cents per 100 pounds and apply on cotton piece goods, any quantity:

To Boston from—	All-rail distances.	Rates, rail and water.	Rates, all rail.	To Boston from—	All-rail distances.	Rates, rail and water.	Rates, all rail.
	<i>Miles.</i>				<i>Miles.</i>		
Henderson,	1,265	66.5	71.5	Selma, Ala.	1,334	¹ 52.0	58.0
Magnolia, Miss.	1,612	60.0	60.0	Speigner, Ala.	1,300	¹ 52.0	58.0
McComb City, Miss.	1,604	60.0	60.0	Birmingham, Ala.	1,277	¹ 52.0	58.0
Winona, Miss.	1,484	60.0	60.0	Florence, Ala.	1,214	¹ 52.0	55.0
Kosciusko, Miss.	1,435	60.0	60.0	Huntsville, Ala.	1,178	¹ 52.0	55.0
Stonewall, Miss.	1,448	60.0	60.0	Pelham, Ga.	1,308	¹ 52.0	57.0
Meridian, Miss.	1,430	60.0	60.0	Griffin, Ga.	1,152	¹ 52.0	58.0
Starkville, Miss.	1,378	60.0	60.0	Augusta, Ga.	1,032	41.0	44.0
Tupelo, Miss.	1,348	60.0	60.0	Cartersville, Ga.	1,117	¹ 52.0	58.0
Nashville, Tenn.	1,309	46.0	50.0	Greenville, S. C.	949	48.0	54.0
Montgomery, Ala.	1,284	¹ 52.0	58.0				

¹ Insured rate, 55 cents.

² Insured rate, 54 cents.

Another exhibit filed by complainant presents the following comparisons of the rail-and-water rates from Henderson and points in Mississippi Valley territory to eastern seaboard cities:

From—	To Baltimore, Md.	To Boston, Mass.	To New York, N. Y.	To Philadelphia, Pa.
Henderson, Ky.	58.9	66.5	61.4	59.7
Columbus, Miss.	57.0	60.0	60.0	58.0
Covington, Tenn.	58.0	61.0	56.0	54.0
Demopolis, Ala.	57.0	60.0	60.0	58.0
Elkwhite, Ala.	57.0	60.0	60.0	58.0
Enterprise, Miss.	57.0	60.0	60.0	58.0
Kosciusko, Miss.	57.0	60.0	60.0	58.0
Leavel, Miss.	58.0	60.0	60.0	54.0
McComb, Miss.	57.0	60.0	61.0	58.0
Magnolia, Miss.	57.0	60.0	¹ 55.0	58.0
Northwood, Miss.	57.0	60.0	¹ 55.0	58.0
Notches, Miss.	58.0	60.0	¹ 55.0	58.0
A. & M. College, Miss.	57.0	60.0	60.0	58.0
Starkville, Miss.	57.0	60.0	60.0	58.0
Stonewall, Miss.	57.0	60.0	60.0	58.0
Tupelo, Miss.	57.0	60.0	60.0	58.0
Uniontown, Ala.	57.0	60.0	60.0	58.0
Wesson, Miss.	57.0	60.0	¹ 55.0	58.0
West Point, Miss.	57.0	60.0	60.0	58.0
Whom, Miss.	57.0	60.0	60.0	58.0
Yancey City, Miss.	57.0	60.0	60.0	58.0

¹ Uninsured rate, 51 cents per 100 pounds.

Complainant also filed exhibits showing that rail-and-water rates which are lower than those shown in the above table are maintained from other points in the states of Alabama, Tennessee, and Georgia to the same destinations.

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Comparisons were made of the average of the class rates from Henderson and the average of the class rates from numerous competing cotton-mill points in the south to Boston. It is shown by these comparisons that rail-and-water rates from Henderson are 117.1 per cent of the average of the class rates; and that the average rate on cotton piece goods applicable from all southern points named is about 80 per cent of the average of the class rates from the same points. With respect to all-rail rates on cotton piece goods it is shown that from Henderson they are 119.2 per cent of the average of the class rates, and about 80 per cent of the average of the class rates from the other mill points.

Rates on cotton piece goods from Henderson and the other points with which comparisons were made apply, as stated, on any quantity. Complainant's witness testified with respect to the loading of cars as follows:

We usually load from 10,000 or 12,000 up to 15,000 or 20,000 pounds to the car, but that will usually go to three or four or five different purchasers, but we usually load as much as 10,000, 12,000, or 15,000 pounds. That is hauled over the Louisville, Henderson & St. Louis to Louisville and usually it is hauled right through to seaboard before breaking bulk.

The record shows that the average value of cotton piece goods is 23 cents per pound. Based upon the present rates the revenue per car on all-rail shipments from Henderson to Boston, a distance of 1,265 miles, is \$143 on a carload of 20,000 pounds worth \$4,600, and \$107.25 per car on a carload of 15,000 pounds worth \$3,450. The car-mile revenues are about 11 cents and 8 cents, respectively, and the ton-mile revenue slightly more than 1 cent. From Henderson to New York City, a distance of 1,004 miles, the car-mile revenue on all-rail shipments is about 13 cents on a carload of 20,000 pounds and about 10 cents on a carload of 15,000 pounds.

Complainant states that the higher rates from Henderson than from competing producing points in Mississippi, Alabama, and Texas place it at a disadvantage, although the rate differences are not so great as to exclude competition, and that its chief competitor is a manufacturer of similar goods at Nashville. The rail-and-water rates from Henderson in effect when this case was heard exceeded those from Nashville by the following amounts: To Baltimore, 15.9 cents; to Philadelphia, 15.7 cents; to New York, 15.4 cents; to Boston, 20.5 cents. The difference in all-rail rates was 1 cent greater than that in the rail-and-water rates. The class rates from Nashville to trunk line territory are approximately the same as the class rates from Henderson to the same points. Recently practically all of complainant's shipments have moved over the Louisville, Henderson & St. Louis to Louisville, Chesapeake & Ohio Railway to Newport News, and

steamship lines beyond. Few shipments are made over the all-rail routes.

Defendants' evidence shows that from points in Georgia and Alabama south of the line of the Southern Railway extending from Memphis to Chattanooga, Tenn., rates on cotton piece goods to points in trunk line territory are based on the rates from Augusta, Ga. That city is located on the Savannah River, a navigable stream, and low rates on cotton piece goods have always been maintained by boat lines operating from Augusta to Savannah in connection with steamship lines from that point to eastern destinations. All-rail lines from Augusta have met this competition by fixing their rates small differentials over the all-water rates. Cotton mills were first located at points in the vicinity of Augusta about the year 1880, and the rate adjustment from such points has been and is controlled by the rail lines to the south Atlantic ports or by water lines operated in connection with steamship lines from the ports. *Warren Mfg. Co. v. Southern Ry. Co.*, 12 I. C. C., 381. Subsequently cotton mills were established at points westward from Augusta and now are scattered throughout the states of Georgia, Alabama, Mississippi, and Tennessee. Carriers operating from the west to the east fixed rates from Atlanta, Birmingham, Montgomery, and other points with relation to those from Augusta. In 1900, following an increase in the rates from Augusta, the rates from Atlanta, Birmingham, Montgomery, and other cotton-manufacturing points in the same general territory to eastern seaboard points were correspondingly increased from 56 cents to 58 cents all rail, and from 53 cents to 55 cents rail and water. These rates are still in effect.

Rates from points on and north of the Southern Railway's line from Memphis through Decatur and Huntsville, Ala., to Chattanooga and south of the northern boundary of Tennessee, including such points as Nashville, and Florence and Sheffield, Ala., to eastern seaboard and interior eastern points, are based on the rates from Memphis to the same points. A representative of the Louisville & Nashville testified that in 1893 a rate of 60 cents was established from Memphis as the result of intense water competition and rail-and-water competition between all carriers operating out of Memphis, and it is stated that this rate remained in effect until increased after our decision in *The Five Per Cent Case*, 32 I. C. C., 325. The Louisville, New Orleans & Texas Railway then operated from Memphis to New Orleans and there connected with the Morgan Steamship line. Steamers also operated from Memphis to New Orleans. In 1902 the Southern Railway extending from Memphis through Chattanooga and Knoxville to Bristol, Tenn., in connection with the Norfolk & Western, established a rate of 55 cents from its mill points in Alabama. Prior to 1901

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the rate from Nashville to New York was 55 cents, established by the Nashville, Chattanooga & St. Louis Railway, which extends from Nashville to Chattanooga and Atlanta, where it connects with the Southern Railway and other lines operating through the Virginia cities or through the south Atlantic ports. Early in 1901 the all-rail rate from Nashville to New York and Boston was reduced to 50 cents and the rail-and-water rates were reduced accordingly. A representative of the Louisville & Nashville stated at the hearing that the rates then in effect from Nashville were not in conformity with the general basis of rates in the same territory and that they would be increased to the Decatur basis, which is 55 cents all rail and rail and water to Boston and New York. Tariffs which became effective May 20, 1916, increased the rates from Nashville to New York and Boston to 55 cents. Rates from Nashville to other points in trunk line territory were correspondingly increased.

Prior to 1898 the joint rates from cotton-mill points on the Louisville & Nashville to trunk line territory did not apply through the Ohio River crossings. In December of that year rates were established from Montgomery and Prattville, Ala., by way of Cincinnati. Later the Cincinnati route was opened from other points in Alabama and finally the rates were made applicable from all cotton-mill points in the south through all Ohio River crossings. It is asserted by the Louisville & Nashville that it could not participate in the traffic from the Decatur and Florence group if it maintained higher rates than are fixed from those points by the Southern Railway and other lines; and that under the fourth section it can not maintain higher rates from Nashville than from Decatur.

A representative of the Illinois Central testified that rates from Mississippi Valley junction points to trunk line territory were made by the Southern Railway and that the Illinois Central would be unable to engage in the traffic or to maintain mills on its lines in the same general territory unless it observed the same basis of rates as the Southern Railway.

The Louisville & Nashville and the Illinois Central, the only defendants which were represented at the hearing, seek to justify the maintenance of higher rates from Henderson than from Nashville on the ground that the conditions existing at these points are substantially dissimilar. They assert that the northern lines control the rates from Henderson to trunk line territory and will not participate in joint rates which do not conform to the established percentage relationship to the New York-Chicago scale. Nashville is reached by the Louisville & Nashville, the Nashville, Chattanooga & St. Louis, and the Tennessee Central roads. The latter two lines do not serve Henderson and are not parties defendant. The Illinois Cen-

tral, although a party to the joint rates, does not participate in Nashville traffic and has no voice in the making of rates from that point. The Louisville & Nashville asserts that rates from Nashville are controlled by the Nashville, Chattanooga & St. Louis. It is urged, therefore, that if the Louisville & Nashville and the Illinois Central were to cancel their joint rates from Nashville through Ohio River crossings to trunk line territory, it would not necessarily end the discrimination alleged to result from the maintenance of lower rates from Nashville than from Henderson because other lines extending from Nashville to the Virginia cities and to south Atlantic ports, which do not serve Henderson and are not parties defendant, could continue the lower rates from Nashville.

It is well settled that competition compelling low rates from one point is a defense to a charge of undue preference in not maintaining as low rates from another point not affected by such competitive conditions. In *Ashland Fire Brick Co. v. S. Ry. Co.*, 22 I. C. C., 115, which presented the question of whether lower rates on brick from St. Louis, Mo., to Birmingham, Ala., and other points in the south than were contemporaneously maintained from Ashland, Ky., to the same points unduly discriminated against the latter point, we said:

It is true that we have held in cases where joint or proportional rates were made by all of the carriers leading to certain points of destination that it was within our power to end a discrimination as between points of origin by a reduction in the rate from a certain point that was discriminated against. *Indiana Steel & Wire Co. v. C., R. I. & P. Ry. Co.*, 16 I. C. C., 155; *Railroad Commission of Tennessee v. Ann Arbor R. R. Co.*, 17 I. C. C., 418. This principle, however, only has application where the traffic from both groups of origin is necessarily transported to destination by the same connecting carrier or carriers, and where it is possible for the delivering carriers to put an end to the discrimination by the exercise of their power to refuse to enter into preferential joint or proportional rates.

The principle announced in that case, however, is not decisive of the issues here. It is no defense to say that the rates from Henderson are controlled by lines which are parties defendant but which failed to appear at the hearing. *Holland Blow Stave Co. v. A. C. L. R. R. Co.*, 24 I. C. C., 81. The Louisville & Nashville owns a controlling interest in the Louisville, Henderson & St. Louis and in the Nashville, Chattanooga & St. Louis, and its contention that rates from Nashville are controlled by the latter line is not convincing. *Chamber of Commerce of Chattanooga v. S. Ry. Co.*, 10 I. C. C., 111; *Bowling Green Business Men v. L. & N. R. R. Co.*, 24 I. C. C., 228. But this contention, if true, would not govern, for each carrier that participates in joint rates is responsible for discriminations resulting therefrom, even if its lines do not extend to the point preferred. The mere fact that it is possible to move traffic from Nashville to some if not all of the destinations in question over the lines of carriers which are not named

in the complaint would not justify the maintenance of unduly preferential rates by the lines which are parties defendant.

Rates from Nashville have, as stated, been increased, and are as high as those from Decatur and Florence. They could not be higher under the long-and-short-haul rule. These rates, and those from the other competing points of production named in the complaint, are made under circumstances and conditions which are substantially dissimilar from those existing at Henderson, and upon all of the facts of record we are of opinion and find that the rates attacked are not shown to be unreasonable or unjustly discriminatory. An order will be entered dismissing the complaint.

Defendants offered no evidence in support of their fourth section applications, which accordingly will be denied to the extent that they are here involved.

SO L. C. C.

No. 7710.
LUDOWICI-CELADON COMPANY
v.
ELGIN, JOLIET & EASTERN RAILWAY COMPANY ET AL.

Submitted July 10, 1915. Decided May 9, 1916.

Charges collected for the transportation of two carloads of roofing tile and accessories from Chicago Heights, Ill., to Daytona, Fla., found to have been unlawful. Reparation awarded.

O. M. Rogers for complainant.

Thomas E. Bond for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of clay products, with its principal office at Chicago, Ill., and a plant at Chicago Heights, Ill. By complaint, filed February 1, 1915, it alleges that the charges collected by defendants for the transportation of two carloads of roofing tile and accessories, shipped August 30, 1912, from Chicago Heights to Daytona, Fla., were unreasonable and in excess of the rate legally applicable. Reparation is asked and the establishment of a definite classification and tariff provision relative to roofing tile for the future. The claim was presented to the Commission informally April 25, 1914.

The shipment consisted of 54,000 pounds of roofing tile, 5,957 pounds of strips, 86 pounds of copper nails, 8 pounds of wire nails, and 445 pounds of roofing cement in paste form, and was loaded into two cars, 33,000 pounds of roofing tile in one, the remainder of the shipment in the other. The two cars were delivered to the initial carrier under one bill of lading, consigned by complainant to itself at Daytona, and moved: Elgin, Joliet & Eastern Railway to Matteson, Ill.; Illinois Central Railroad to Cairo, Ill.; Mobile & Ohio Railroad to Montgomery, Ala.; Atlantic Coast Line Railroad to Jacksonville, Fla.; Florida East Coast Railway to Daytona. Charges were collected in the sum of \$308.53, on a total weight of 60,496 pounds, at a combination rate of 51 cents per 100 pounds, composed of a sixth-class proportional rate of 10 cents to Cairo, a commodity rate of 20 cents thence to Jacksonville, and a class A rate of 21 cents thence to destination. The Jacksonville-Daytona component is the sole basis of the complaint.

The tariff applicable south of Jacksonville was governed by the southern classification and a Florida East Coast Railway exception sheet. The southern classification effective at the time rated roofing tile the "same as pipe, earthen and concrete," which was rated class A. The Florida East Coast Railway exception sheet did not specifically provide for roofing tile, but contained an item as follows:

Pipe, sewer, earthen and concrete, and fixtures, carload, minimum weight, 25,000 pounds, * * * one-half of A.

Complainant contends that the classification provision for roofing tile the "same as pipe, earthen and concrete," applied to the rating of pipe in the exception sheet as well as to the rating in the classification, and that as the exception sheet took precedence over the classification the application of the class A rate of 21 cents from Jacksonville to Daytona was illegal, the legal rate being one-half of class A. Complainant states that the basis asked was applied under similar conditions to other shipments of roofing tile that moved south from Jacksonville before complainant's shipment moved. Since November 1, 1912, the Florida East Coast Railway exceptions to southern classification have specifically provided for the application of one-half of the class A rating on roofing tile, minimum weight 30,000 pounds. No evidence of unreasonableness was introduced.

The Florida East Coast Railway filed no answer to the complaint and was not represented at the hearing. The initial carrier insists, however, that the rate legally applicable from Jacksonville was applied and that the use of the words "same as" in connection with the classification reference prevented the application of the rating in the exceptions. No such restriction is authorized by any provision in the classification and we can not assent to this contention. Classification exceptions must be interpreted in the light of the classification and of the specifications and definitions contained in such classification. *Marr & Sons v. I. C. R. R. Co.*, 36 I. C. C., 519.

The classification and tariffs in effect when the shipment moved show that a carload mixture of roofing tile and accessories was not permitted, and that the rate charged on the strips, nails, and roofing cement was not legally applicable.

We find that the through rate applied to the roofing tile in the shipment was illegal to the extent that it exceeded the same rate with the one-half class A rate of 10.5 cents per 100 pounds substituted as the Jacksonville-Daytona component, and that the total charges legally applicable for the through transportation of the two carloads would have been \$299.17 as follows: \$218.70 on 54,000 pounds of roofing tile at the combination through rate of 40.5 cents; \$75.06 on 5,957 pounds of strips at the fourth-class rate of \$1.26; \$1.58 on 94 pounds of nails at the second-class rate of \$1.68; \$3.83 on 445 pounds of

roofing cement at the sixth-class rate of 86 cents. We further find that complainant made the shipment as described and paid and bore charges thereon in the sum of \$308.53, which were illegal to the extent that they exceeded \$299.17; and that it has been damaged to the extent of the difference between the two sums and is entitled to reparation in the sum of \$9.36, with interest from September 7, 1912.

An order awarding reparation will be entered.



No. 7481.

NORTH STATE LUMBER COMPANY

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted September 21, 1915. Decided May 9, 1916.

Carload of lumber shipped from Ore Hill, N. C., to New York, N. Y., not found to have been misrouted. Complaint dismissed.

M. S. Satterfield and John R. Walker for complainants.

Frank W. Gwothmey and E. C. Blanchard for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are M. S. Satterfield and M. S. Powell, copartners, engaged in the lumber business at Greensboro, N. C., under the trade name of the North State Lumber Company. By complaint, filed November 11, 1914, they alleged that, due to misrouting, defendants collected unreasonable charges for the transportation of a carload of lumber from Ore Hill, N. C., to New York, N. Y. Reparation is asked. The North Carolina Pine Association, a voluntary organization of pine-lumber manufacturers with headquarters at Norfolk, Va., intervened on behalf of one of its members, the South Atlantic Lumber Company, a corporation engaged in the lumber business at Greensboro. The intervening petition asks for reparation on five carloads of lumber shipped from Garner and Roaring River to Jersey City and Trenton, N. J., in October, 1911, and March, 1912, but all of these shipments were delivered more than two years before claim was filed, so the claim is barred by the statute of limitation.

20 L. C. C.

Complainants caused a carload of lumber to be delivered to the Southern Railway Company on September 9, 1913, at Ore Hill, consigned to Sam. E. Barr, New York, routed "Penn. Ry." No rate or junction point through which the shipment should move was shown in the bill of lading. Two rates applied on lumber in carloads from Ore Hill to New York: 26.5 cents per 100 pounds over the Southern Railway and lines of the Pennsylvania system by way of Potomac Yard, Va.; 22.5 cents per 100 pounds by way of the Southern Railway to Pinner's Point, Va., the New York, Philadelphia & Norfolk Railroad to Delmar, Del., and lines of the Pennsylvania system beyond. The shipment was moved by way of Potomac Yard, and the 26.5-cent rate was charged. Complainants contend that the shipment should have moved through Pinner's Point.

Complainants would be right if they had not routed the shipment at all or if they had inserted the rate applicable through Pinner's Point in the bill of lading. But under the directions actually given the shipment was not misrouted. *Davidson Lumber Co. v. So. Ry. Co.*, Docket No. 4903, unreported; *Forester Lumber Co. v. So. Ry. Co.*, Docket No. 5644, unreported; *Wood & Skilton v. So. Ry. Co.*, Docket No. 6213, unreported.

The charges collected are not attacked on any other grounds, and the complaint must therefore be dismissed.

39 I. C. C.

No. 7500.

ANDREW A. JACOB COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted May 17, 1915. Decided May 9, 1916.

Rates applied by the defendants on less-than-carload shipments of women's untrimmed hats from points east of the Missouri River to San Francisco, Cal., found to have been in excess of the rates legally applicable.

Charles Clifford and Malcolm A. Coles for complainants.

T. J. Norton and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

George D. Squires for Union Pacific Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; Southern Pacific Company (Atlantic Steamship lines); and Southern Pacific Company.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainants are engaged in buying and selling women's trimmed and untrimmed hats at San Francisco, Cal. By complaint, filed November 21, 1914, they allege that the rates charged by defendants for the transportation of certain less-than-carload shipments of women's untrimmed hats from points east of the Missouri River to San Francisco subsequent to June 15, 1912, were unreasonable and unjustly discriminatory to the extent that they exceeded \$3 per 100 pounds and that they exceeded the rates legally applicable to the same extent. Reparation is asked and the establishment of reasonable rates for the future. The claims based on some of the shipments are barred by the statute of limitation.

The shipments properly before us originated at points in New York, New Jersey, Massachusetts, and Pennsylvania, and at Cleveland, Ohio, Detroit, Mich., Chicago, Ill., and Milwaukee, Wis. The record does not show definitely the exact character of all of the shipments or the manner in which they were packed. Witnesses for only three of the complainants testified at the hearing. Their testimony and exhibits showed that some, if not all, of the shipments consisted of women's unfinished hats, untrimmed hats without binding or bands, packed three or more in a box. Such hats are made of felt, straw, and other materials and are known to the trade as

"untrimmed hats," "blocks," and "shapes." There were not and are not now any specific commodity rates on "untrimmed hats," "blocks," and "shapes." Charges were collected at the first-class rates provided for hats classified under the caption "millinery goods." The first-class rates to San Francisco were and are: \$3.70 per 100 pounds from points in New York, New Jersey, Massachusetts, and Pennsylvania; \$3.60 from Cleveland; \$3.50 from Detroit; and \$3.40 from Chicago and Milwaukee. All of these rates were established June 15, 1912. Prior to that date the first-class rate to San Francisco from all of these points was \$3 per 100 pounds.

The western classification, which governs shipments to San Francisco from the points of origin, provided as follows during the period from October 1, 1905, to February 14, 1913:

Hats and caps (including straw bonnets, hats, and caps) untrimmed:	Class.
In boxes.....	1
Millinery goods:	
Millinery goods, not otherwise specified, boxed.....	1
Hats, three or more in a box or carton, boxed.....	1

On February 14, 1913, these items were changed to read as follows:

Hats and caps, other than millinery, not otherwise indexed by name:	Class.
In wooden boxes, L. C. L.	1
Millinery goods:	
Hats, three or more in box or carton, in boxes, L. C. L.	1
Straw bonnets, caps, and hats untrimmed:	
In boxes, L. C. L.	1
Millinery goods, not otherwise indexed by name, in boxes, L. C. L.	1

Complainants insist that untrimmed hats are not millinery; that the rate applicable to the shipments that moved prior to April 15, 1913, was a less-than-carload commodity rate of \$3 per 100 pounds provided under the caption "clothing" for "clothing, not otherwise specified (not including fur clothing and personal effects)"; and that the rate legally applicable on the shipments that moved subsequently to April 15, 1913, was a less-than-carload commodity rate of \$3 per 100 pounds established on that date under the caption "clothing" for "hats and caps, other than millinery," boxed.

To prove that hats are clothing, complainants show that the ratings on "clothing" in the western classification prior to February 14, 1913, provided that these ratings were "exclusive of clothing more specifically provided for (see * * * hats, caps, bonnets, shoes, and personal effects * * *)," and that the tariffs naming the commodity rates on clothing also named rates on "oilskin hats" and "sunbonnets," under the caption "clothing." They also show that when shipped to north Pacific coast terminals from points east of the Missouri River women's untrimmed hats are charged a commodity rate of \$3 per 100 pounds provided under the caption "cloth-

ing" for "hats and caps, other than millinery." Defendants insist that women's untrimmed hats are not clothing but millinery, and that the first-class rates provided for hats under the caption "millinery goods" were and are properly applicable to the shipments.

Complainants' evidence that the rates charged were unreasonable is that prior to June 15, 1912, when the first-class rates were increased, both men's and boys' hats, trimmed or untrimmed, and women's untrimmed hats, were accorded a rate of \$3 per 100 pounds, and that after April 15, 1913, when the commodity rate of \$3 on "hats and caps, other than millinery," was established, defendants successfully applied to us for leave to make refund on the basis of \$3 per 100 pounds on men's and boys' hats and caps, both trimmed and untrimmed, that moved during the period from June 15, 1912, to April 15, 1913. It is stated that the average value of women's untrimmed hats received by some of the complainants is less than the average value of men's and boys' hats, and that women's untrimmed hats nest closer. The average value of men's hats is not shown, and the evidence as to the average values of women's untrimmed hats is vague and indefinite.

The evidence adduced relative to unjust discrimination is that some women's untrimmed hats are made of the same material and are of practically the same shape as those worn by men, and that the commodity rate of \$3 per 100 pounds provided for "hats and caps, other than millinery," is charged when they are shipped to men's hat stores, while the first-class rates which exceed \$3 per 100 pounds are charged when they are shipped to women's hat stores. Shipments to north Pacific coast terminals, whether consigned to women's hat stores or men's hat stores, are charged a commodity rate of \$3 provided for "hats and caps, other than millinery," and complainants insist that their competitors at those places enjoy an unfair advantage in distributing their supplies in California territory.

The rates assailed represent increases over the rates in effect prior to January, 1910, and defendants have the burden of justifying them. Defendants insist that the increased class rates are not unreasonable and resulted from our decisions in the *Spokane Case*, 19 I. C. C., 162, and the *Reno Case*, 19 I. C. C., 238. They state that both men's and boys' hats and caps and women's untrimmed hats are properly rated first class; that the lower commodity rate on "hats and caps, other than millinery," established April 15, 1913, was due to water competition and was intended to apply on men's and boys' hats and caps only; and that only a comparatively small number of women's untrimmed hats moved by water.

There is some movement of men's and boys' hats and caps by water, but one of the reasons that influenced defendants to establish

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the commodity rate of \$3 on "hats and caps, other than millinery," was the application of this rate on "clothing, not otherwise specified." The commodity rate of \$3 on "hats and caps, other than millinery," is still in effect.

We find that the rates legally applicable to women's untrimmed hats, packed in boxes, in less than carloads, from the points of origin involved to San Francisco, that moved prior to February 14, 1913, were the first-class rates provided for "hats and caps (including straw bonnets, hats, and caps), untrimmed"; that the rates legally applicable subsequently to February 14, 1913, and until April 15, 1913, were the first-class rates provided for "hats and caps, other than millinery, not otherwise indexed by name"; and that the rates charged on similar traffic that moved subsequently to April 15, 1913, were illegal to the extent that they exceeded the rate of \$3 per 100 pounds established on that date for the transportation of "hats and caps, other than millinery, boxed." The record does not warrant a finding that the rates applicable during the period from June 15, 1912, to April 15, 1913, were unreasonable or unjustly discriminatory, nor does it disclose the exact character of complainants' shipments that moved subsequently to April 15, 1913, or the manner in which they were packed. Defendants will be expected to refund to the proper parties any illegal charges collected on shipments moved subsequent to April 15, 1913, as hereinabove indicated, together with interest. Upon receipt of advice that such refund has been made, an order dismissing the complaint will be entered.

39 I. C. C.

No. 7554.
PEABODY COAL COMPANY
v.
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY
ET AL.

Submitted November 26, 1915. Decided May 9, 1916.

Following *Appalachia Lumber Co. v. L. & N. R. R. Co.*, 25 I. C. C., 193, reparation denied on certain carload shipments of bituminous coal from Marion, Ill., to Cedar Rapids, Iowa. Complaint dismissed.

J. Solari for complainant.

E. F. Brubaker and *G. H. Kummer* for Chicago & Eastern Illinois Railroad Company and its receivers.

R. H. Widdicombe and *A. F. Cleveland* for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in coal and coke, with its principal office at Chicago, Ill. By complaint, filed December 7, 1914, it alleges that the rate of \$2.35 per net ton charged by defendants for the transportation of eight carloads of bituminous coal shipped during February, 1910, from Marion, Ill., to Cedar Rapids, Iowa, was unreasonable and in violation of the fourth section in that it exceeded the rate to West Rapids, Iowa, the next more distant station, to which point Cedar Rapids is directly intermediate. Reparation is asked. The claim was presented to the Commission informally January 29, 1912. Those portions of Fourth Section Applications Nos. 3239 and 3247 filed by the Chicago & Eastern Illinois Railroad Company in which authority is asked for the continuance of rates on coal from Marion to West Rapids which are lower than the rates contemporaneously applicable on like traffic to Cedar Rapids and other like intermediate points were set for hearing with the complaint.

The shipments were specifically routed by complainant and moved accordingly: Chicago & Eastern Illinois and Vandalia railroads to Peoria, Ill.; Chicago & North Western Railway to destination. No joint rate was applicable over the route of movement and charges were collected at a combination rate of \$2.35 per net ton, composed of a rate of 95 cents from Marion to Peoria and a rate of \$1.40 beyond.

A joint rate of \$2.10 was contemporaneously applicable from Marion to Cedar Rapids by way of the Chicago & Eastern Illinois Railroad and the Chicago, Rock Island & Pacific Railway. A rate of \$2.10 per net ton, composed of a proportional rate of 70 cents to Peoria and a local rate of \$1.40 beyond, applied over the route of movement from Marion to West Rapids. The proportional rate of 70 cents to Peoria, although otherwise applicable generally on shipments destined to points beyond, did not apply on shipments destined to certain points located on the Chicago & North Western Railway and the Chicago, Burlington & Quincy Railroad, including Cedar Rapids. Effective December 1, 1910, all restrictions with respect to the non-application of the proportional rate on this traffic when destined to Cedar Rapids and other points on the Chicago & North Western and the Chicago, Burlington & Quincy named in the original tariff were removed, thus eliminating the fourth section departure involved. At the present time defendants publish a joint through rate of \$2.25 per net ton from Marion to Cedar Rapids. A proportional rate of 77 cents is applicable from Marion to Peoria; a local rate of \$1.60 from Peoria to Cedar Rapids.

No evidence was introduced which would justify a finding that the rate applicable to the shipments involved was unreasonable and no damage is shown to have been sustained by complainant on account of the lower rate maintained to West Rapids. Reparation must therefore be denied. *Appalachia Lumber Co. v. L. & N. R. R. Co.*, 25 I. C. C., 193.

An order dismissing the complaint will be entered.

39 I. C. C.

No. 7644.

SOUTH ST. JOSEPH LIVE STOCK EXCHANGE ET AL.

v.

**ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.**

Submitted September 27, 1915. Decided May 9, 1916.

Defendants' rate of 18½ cents per 100 pounds for the transportation of fresh meat, packing-house products, and green salted hides in carloads from St. Joseph, Mo., to St. Louis, Mo., for local delivery and for beyond, and their rate of 23½ cents to Chicago, Ill., for local delivery and for beyond, not found to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

H. G. Krake and D. O. Decker for complainants.

T. J. Norton and D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

W. F. Dickinson, W. T. Hughes, and J. C. La Coste for Chicago, Rock Island & Pacific Railway Company.

H. G. Herbel and F. G. Wright for Missouri Pacific Railway Company.

J. G. Morrison for Chicago, Great Western Railroad Company.

Geo. H. Crosby for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the South St. Joseph Live Stock Exchange, a voluntary association with headquarters at St. Joseph, Mo., whose members are engaged in the general business of receiving, handling, buying, and selling live stock at St. Joseph, and the Jas. C. Smith Hide Company, a copartnership composed of James C. Smith, W. H. Richards, and H. L. Page, engaged in buying and selling green salted hides and pelts at St. Joseph. By complaint, filed January 5, 1915, they allege that defendants' rates of 18½ cents per 100 pounds for the transportation of fresh meats, packing-house products, and green salted hides in carloads from St. Joseph to St. Louis, Mo., locally and for beyond, and 23½ cents to Chicago, Ill., locally and for beyond, are unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceed rates of 15 cents to St. Louis locally, 13½ cents for beyond, and 20 cents to Chicago locally, 18½ cents for beyond, maintained by the Chicago

& Alton Railroad and the Wabash Railroad from Kansas City, Mo. Reasonable and nondiscriminatory rates are asked for the future.

St. Joseph is a city of about 80,000 inhabitants, on the Missouri River, 63 miles north of Kansas City. It has long been an important packing-house center. It is in competition with packing houses located at Kansas City and other near-by packing-house centers. About 50,000 carloads of animals are slaughtered there annually, which are drawn from Texas, Oklahoma, Colorado, Kansas, Missouri, Iowa, and Nebraska.

Equal rates apply on live stock to St. Joseph and Kansas City except from near-by points, and except for rates on fresh meats and packing-house products, equal rates generally apply on all classes and commodities from Kansas City and St. Joseph to St. Louis and Chicago and points beyond both cities. The western classification rates fresh meats in carloads third class; packing-house products and green salted hides, fifth class. The third-class rate from St. Joseph to St. Louis and Mississippi River crossings is 35 cents; the fifth-class rate between the same points 22 cents. The rates in issue are all commodity rates lower than the class rates. Traffic from St. Joseph to St. Louis by way of the Chicago, Burlington & Quincy Railroad, hereinafter termed the Burlington, and the Chicago, Rock Island & Pacific Railway, hereinafter termed the Rock Island, moves entirely intrastate, and is therefore beyond our jurisdiction.

References hereinafter to packing-house products will be understood to embrace green salted hides.

Prior to February 24, 1903, the local and proportional rates on fresh meat and packing-house products from St. Joseph and Kansas City to St. Louis and Chicago were 18½ cents and 23½ cents, respectively. On that date the rates from both points were reduced to 15 cents to St. Louis proper, 13½ cents for beyond, and to 20 cents to Chicago proper, 18½ cents for beyond. This basis was maintained until March 20, 1910, when the adjustment in effect prior to February 24, 1903, was restored. All of the defendants joined in these increased rates from St. Joseph except the Chicago Great Western Railroad. The Chicago & Alton, hereinafter termed the Alton, the Wabash, and the Chicago Great Western continued the existing rates from Kansas City. On May 20, 1910, the Chicago Great Western joined in the increased rates from St. Joseph and Kansas City. A few months before the increase in 1910 various packing concerns at Kansas City entered into contracts with the Alton whereby that carrier was to continue the then existing rates to St. Louis and Chicago, both for local delivery and for beyond, the contracts to remain in force for a period of seven years beginning December 30, 1909. The Wabash has maintained rates on the same basis as the Alton. Both

roads have their own rails all the way from Kansas City to St. Louis and Chicago. The Wabash also has its own rails to Pittsburgh, Pa., and Buffalo, N. Y. Neither carrier reaches St. Joseph over its own rails. Tariffs were filed on December 1, 1914, in which rates were proposed on packing-house products from St. Joseph and Kansas City to St. Louis and Chicago that would increase both the local and the proportional rates to both points by $3\frac{1}{2}$ cents. A rate of 22 cents was proposed to St. Louis; a rate of 27 cents to Chicago. The Alton and the Wabash did not join in the proposed increases from Kansas City, continuing the adjustment just described. The proposed rates were suspended and after hearing were condemned in the *1915 Western Rate Advance Case*, 35 I. C. C., 497-590. Effective June 1, 1915, after the complaint was heard, the Alton and the Wabash increased their local rate from Kansas City to St. Louis to 18 cents and their local rate from Kansas City to Chicago to 23 cents. The $18\frac{1}{2}$ -cent rate previously carried as a proportional rate to Chicago was canceled.

Complainants contend that the adjustment described unjustly discriminated against St. Joseph and its industries and live-stock market in favor of Kansas City, and a good deal of evidence was adduced to support the contention. It appears clearly that St. Joseph packers have been at a disadvantage of $3\frac{1}{2}$ cents on local traffic to St. Louis and to Chicago, 5 cents on traffic moved beyond, and that they are now at a disadvantage of one-half cent on local traffic to both points, 5 cents on traffic moved beyond St. Louis and points taking the same rates.

The Alton and the Wabash are parties to the tariff which names the $18\frac{1}{2}$ -cent and the $23\frac{1}{2}$ -cent rates involved from St. Joseph, but these lines are not shown to have received any of the traffic and apparently have not received any of it for the reason that the Missouri Pacific, the Burlington, and the Rock Island railways have their own rails all the way from St. Joseph to St. Louis, while the Atchison, Topeka & Santa Fe, the Chicago Great Western, the Burlington, and the Rock Island railways have their own rails all the way from St. Joseph to Chicago. It thus appears that although the Alton and the Wabash haul traffic from Kansas City to St. Louis, Chicago, and points beyond at the lower rates, they do not participate in traffic from St. Joseph at the higher rates. While this situation discloses no actual discrimination in the past, the elements of discrimination are present and will continue so long as the Alton and Wabash maintain the lower rates from Kansas City, thus affording opportunity for unlawful preferment, should shippers exercise their right to route traffic over those lines from St. Joseph.

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Fresh meats and packing-house products move, to a considerable extent, in refrigerator cars; and iced green salted hides move in ordinary box cars. A refrigerator car weighs about 22 tons, while the ice necessary for its refrigeration averages about 3 tons. The average weight of a carload of fresh meat is 11.6 tons; of packing-house products about 16 tons; of green salted hides about 25 tons. Approximately 79 per cent of the refrigerator equipment used is returned empty. No evidence was offered relative to the cost of ice at St. Joseph or at re-icing stations, and no evidence relative to the cost of handling the commodities at St. Joseph.

Rate comparisons are in evidence, including the following:

	Distance.	Carriers.	Rate on fresh meats.		Rate on packing-house products.	
			Per 100 pounds.	Earnings per ton-mile.	Per 100 pounds.	Earnings per ton-mile.
From St. Joseph to—	<i>Miles.</i>		<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Mississippi River.....	203	Burlington....	18.5	18.2	18.5	18.2
St. Louis.....	323	.....do.....	18.5	11.4	18.5	11.4
Chicago.....	468	.....do.....	23.5	10.0	23.5	10.0
From Kansas City to—						
Mississippi River.....	198	Wabash.....	18.5	18.6	18.5	18.6
St. Louis.....	278	.....do.....	15.0	10.8	15.0	10.8
St. Louis (for beyond).....	278	.....do.....	13.5	9.3	13.5	9.3
Chicago.....	483	C. & A.	20.0	8.3	20.0	8.3
Chicago (for beyond).....	483	.....do.....	18.5	7.6	18.5	7.6
Memphis, Tenn.....	484	Frisco.....	33.5	13.8	28.0	11.8
Memphis (for beyond).....	484	.....do.....	28.0	10.7	21.0	8.6
From St. Joseph to—						
Memphis.....	547	Burlington and Frisco.	33.5	12.2	28.0	10.2
Memphis (for beyond).....	547	.....do.....	28.0	9.5	21.0	7.6
From Ottumwa, Iowa, to Chicago.....	280	Burlington...	14.5	10.4	14.5	10.4
From St. Paul, Minn., to—						
Chicago.....	398	C. & N. W.	18.0	9.0	16.0	8.0
St. Louis.....	575	Burlington....	21.0	7.3	21.0	7.3
From Austin, Minn., to Chicago.....	361	C. G. W.	18.0	10.0	16.0	8.0

The average mileages from St. Joseph and Kansas City to the Mississippi River, St. Louis, Chicago, and Memphis are 417 miles and 384 miles, respectively; the average ton-mile earnings, 11.8 mills and 10.9 mills. The mileages from Ottumwa, St. Paul, and Austin to Chicago and St. Louis, as given in the foregoing table, average 403 miles, the ton-mile earnings 10.7 mills. The rate named from Austin to Chicago was established as a result of our decision in *Hormel & Co. v. C., M. & St. P. Ry. Co.*, 26 I. C. C., 112. St. Joseph is on a rate parity with Kansas City on both local and through traffic to Memphis. The St. Louis & San Francisco Railroad is the short line between Kansas City and Memphis and appears to control the rate. The other defendants and their connections meet the short-line rate. There is no evidence that conditions at Ottumwa, St. Paul, or Austin were or are similar to conditions that obtain at St. Joseph. The rates to Memphis appear to be fairly in line with the rates attacked.

The packers at St. Joseph who are primarily interested in the rates on outbound fresh meats and packing-house products are not parties to the record and have not filed any complaint of their own.

About 17,000 carloads of fresh meats and packing-house products on the average have been shipped annually from St. Joseph to Mississippi River crossings, Chicago, and points beyond. About 13,000 carloads moved to points east of the Mississippi River and Chicago. About 41,750 carloads of fresh meats and packing-house products were shipped from Kansas City during the year 1914.

Defendants other than the Alton and the Wabash contend that the lower rates maintained by those two roads from Kansas City are unreasonably low and unremunerative and that they have virtually withdrawn from the business in preference to meeting such rates. During March, 1915, the Alton hauled 1,590 carloads of packing-house products, the Wabash 955 carloads, from Kansas City to the Mississippi River, Chicago, and points beyond, the Santa Fe only 8 carloads, 6 of which were hauled to local points. Defendants state that the rates in effect from 1902 to May 20, 1910, were low rates and the result of strong competition and rate wars; also that market competition, the concentrated character of the business, and the control of large tonnage have rendered effectual the demands made for maximum service at minimum rates.

We find that the rates assailed are not unreasonable, and have not in fact been unjustly discriminatory, or unduly prejudicial. The complaint will be dismissed.

39 L. C. C.

No. 7713.¹

DRAKE MARBLE & TILE COMPANY

v.

**CHICAGO GREAT WESTERN RAILROAD COMPANY
ET AL.**

Submitted September 18, 1915. Decided May 9, 1916.

1. Rates charged by defendants for the transportation of building stone in carloads from St. Paul, Minn., to Kansas City, Mo., found to have been unlawful. Reparation awarded.
2. Defendants' class C rate of 23 cents per 100 pounds for the transportation of straight or mixed carload shipments of dressed building marble and polished building marble or mixed carload shipments of dressed or polished building marble and dressed or polished building stone from St. Paul, Minn., to Kansas City, Mo., not found unlawful or unreasonable.

W. H. Lightner for complainants.

J. G. Morrison and *John Everall* for Chicago Great Western Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations engaged in the stone, marble, and tile business at St. Paul, Minn. By complaints, filed January 30, 1915, and February 27, 1915, they allege that the rates of 16 cents and 17 cents per 100 pounds charged by defendants for the transportation of building stone in carloads from St. Paul to Kansas City, Mo., in 1913 were unreasonable and in violation of the long-and-short-haul rule of the fourth section of the act to the extent that they exceeded a rate of 12 cents per 100 pounds contemporaneously maintained from Sandstone and Banning, Minn., more distant points. Reparation is asked. The claim in the original complaint covering shipments moved during the period from January 17, 1913, to November 26, 1913, was presented to the Commission informally December 19, 1913. The complaint in Sub-No. 1 was filed within two years after the cause of action accrued.

A rate of 12 cents per 100 pounds applied on stone, building, curbing, or paving, in carloads, from Sandstone and Banning to Kansas City and other points in Kansas. The tariff naming it incorporated

¹ The proceeding also embraces complaint in No. 7713 (Sub-No. 1), *C. H. Young Company v. Chicago Great Western Railroad Company et al.*

the provisions of rule 77 of Tariff Circular 18-A and thereby required the application of rates named in the tariff, including the 12-cent rate just cited, to and from intermediate points upon reasonable request therefor, on short notice. Complainants requested defendants to establish the 12-cent rate cited from St. Paul to Kansas City, but defendants proposed instead to cancel its application from Sandstone and Banning. The change proposed was suspended and upon hearing the then existing rates on building, curbing, and paving stone from Sandstone and Banning to Kansas City and points taking the same rates were found to be reasonable maximum rates, and the carriers respondent ordered to comply at once with the request previously received for a rate on building stone from St. Paul to Kansas City not higher than the rate applicable from Sandstone or Banning to Kansas City. *Missouri River Building Stone Rates*, 28 I. C. C., 269. A 12-cent rate was established December 10, 1913.

We said in *Missouri River Building Stone Rates*, *supra*, relative to rule 77 of Tariff Circular 18-A, that—

Manifestly a carrier may not employ this rule for the purpose of giving a rate to a point which it desires to accommodate or favor and then, when it is called upon to accord to intermediate points the rates to which, under the law, they are entitled, escape its obligation by simply canceling the arrangement. The use of this rule and plan for publishing commodity rates does not deprive the intermediate points of any of their lawful rights, and its incorporation in a tariff is a recognition of the rights of the intermediate points under the long-and-short haul rule and a published guaranty that those rights will be recognized and protected upon demand. That guaranty must be observed in full and in good faith.

Following that decision we find upon the facts of record in this case that the rates assailed from St. Paul to Kansas City were illegal to the extent that they exceeded 12 cents per 100 pounds; that complainant in the original complaint made 12 carload shipments of building stone over defendants' lines from St. Paul to Kansas City during the period alleged; that it paid and bore charges thereon in the sum of \$973.39 on 608,380 pounds of stone at a rate of 16 cents per 100 pounds; that it was damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found legal, and that it is entitled to reparation in the sum of \$243.33, with interest from December 1, 1913. We further find that complainant in Sub-No. 1 made 18 carload shipments of building stone from St. Paul to Kansas City during the period from March 15, 1913, to December 8, 1913, 15 over the Chicago Great Western Railroad, Kansas City Terminal Railway, and St. Louis & San Francisco Railroad, and 3 over the Chicago, Rock Island & Pacific Railway, Kansas City Terminal Railway, and St. Louis & San Francisco Railroad; that complainant paid and bore charges thereon in the

sum of \$1,894.95 on 1,175,805 pounds of stone at a rate of 16 cents per 100 pounds, except that a rate of 17 cents was charged on 136,580 pounds; that complainant was damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found legal; and that it is entitled to reparation from the Chicago Great Western Railroad Company and its codefendants in the sum of \$380.62, with interest from January 2, 1914, and from the Chicago, Rock Island & Pacific Railway Company and its codefendants in the sum of \$103.36, with interest from April 3, 1913.

The original complaint was sought to be amended at the hearing on September 11, 1915, to include 12 carloads of stone billed as "dressed stone or marble for building purposes," which moved from St. Paul to Kansas City between December 28, 1912, and December 5, 1913. The Chicago Great Western noted that all of these shipments which had been moved prior to October 16, 1913, were barred by the statute of limitation, but made no objection relative to the remaining five carloads, provided an opportunity should be given for investigating the character and composition of the shipments. Complainant has since advised us that all of the shipments consisted exclusively of stone and marble slabs except for 2,500 pounds of sand-finished floor slabs.

The western classification rated and still rates marble and marble slabs, rough, sawed, or dressed, chiseled, traced, polished, lettered, or carved, not sculptured, class C, in straight or mixed carloads, minimum weight 36,000 pounds, and fourth class in less than carloads. The class C rate applicable from St. Paul to Kansas City when the shipments moved was 23 cents; the fourth-class rate, 34 cents. No provision was made in the western classification for a carload rating on mixed shipments of stone and marble, so that charges should have been collected at the carload rate and minimum weight applicable to one or the other of the commodities and the less-than-carload rate on the other, depending on the weights loaded. The aggregate charges that should have been collected can not be determined on the present record.

The rate established December 10, 1913, from St. Paul applied on building stone, whether rough, dressed, or polished, and complainant contends that the former rates on marble should not have exceeded the rates contemporaneously in effect on stone similarly processed. In *Drake Marble & Tile Co. v. N. P. Ry. Co.*, 37 I. C. C., 512, we held that the rates and ratings on polished building marble and dressed building marble in carloads from St. Paul to points in Minnesota over interstate routes, and to points in North Dakota and South Dakota, were unjustly discriminatory to the extent that they exceeded the rates and ratings on polished building stone and dressed

building stone, respectively, in carloads. Reference was made to a proposed supplement to the current western classification, filed to take effect October 15, 1915, rating polished marble and stone in blocks, pieces, or slabs, in carloads, class C, minimum 36,000 pounds, and dressed marble and stone, in blocks, pieces, or slabs, in carloads, class D, minimum 36,000 pounds. The item containing these provisions was suspended in Investigation and Suspension Docket No. 727, now pending. The same supplement also provided that mixed carloads of two or more kinds of blocks, pieces, or slabs of stone and marble would be taken at the highest rating provided for carload quantities of any article in the shipment, subject to a minimum of 36,000 pounds, which apparently is the basis on which charges were collected on the shipments.

Complainant further contends that the commodity rate on building, curbing, and paving stone from Sandstone and Banning to Kansas City, and the commodity rate on building stone from St. Paul to Kansas City, established December 10, 1913, were also applicable on marble and that a reasonable rate for the mixed shipments involved would have been 12 cents per 100 pounds. But the existence of a commodity rate on building stone from Sandstone and Banning to Kansas City does not necessarily imply that there should have been a similar commodity rate on mixed shipments of dressed and polished stone and marble and unpolished stone from St. Paul to Kansas City. The circumstances under the operation of rule 77 of Tariff Circular 18-A are not the same in respect of these mixed shipments as they were in respect of the shipments of building stone.

We find that the class C rate is not shown to have been illegal or intrinsically unreasonable. The question of the relationship of rates on straight or mixed carloads of dressed building marble and polished building marble with rates on straight or mixed carloads of dressed building stone or polished building stone is not involved, as no discrimination is alleged.

An order awarding reparation on shipments of sawed and dressed building stone will be entered in accordance with the findings herein.

No. 7718.

W. R. BROOKS COAL COMPANY, DOING BUSINESS AS
INTERSTATE SALT COMPANY,

v.

WABASH RAILROAD COMPANY ET AL.

Submitted September 25, 1915. Decided May 16, 1916.

1. Prayer for reparation on shipments of salt from Michigan and Ohio salt fields to points in Nebraska, Kansas, and Colorado denied.
2. Damage, if any, resulting from unjust discrimination in rates is not always measurable by the exact difference in which the rates are found to be unduly preferential or unjustly discriminatory. It may be more or less. The fact of damage attributable to the undue or unreasonable prejudice or advantage complained of and the amount of such damage must both be proved. *Penna. R. R. Co. v. International Coal Co.*, 230 U. S., 184; *New Orleans Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 32.

T. J. Doyle for complainant.

A. F. Cleveland for Chicago & North Western Railway Company.

H. L. McReynolds for Chicago, Rock Island & Pacific Railway Company and receivers thereof.

N. S. Brown, H. G. Herbel, F. G. Wright, O. W. Dynes, C. C. Wright, A. P. Humburg, W. F. Dickinson, R. B. Scott, and K. F. Burgess for Wabash Railroad Company; Missouri Pacific Railway Company; Chicago, Milwaukee & St. Paul Railway Company; and others.

Parker McColleston for New York Central Railroad Company; Michigan Central Railroad Company; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; and Indiana Harbor Belt Railroad Company.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

The complainant, a corporation having its principal place of business at Lincoln, Nebr., is engaged, among other things, in the business of buying and selling salt at wholesale under the trade name and style of Interstate Salt Company. By petition, filed February 3, 1915, it alleges that between the dates of August 30, 1912, and November 25, 1914, it made numerous carload shipments of salt from points in territory commonly known as the Michigan salt fields and from Cleveland in the Ohio salt fields to various points in Nebraska, Colorado, and Kansas, and to one point in Missouri and to one point in

Wyoming, and, further, that for the transportation of said salt the defendants here exacted charges which were "unjust and unreasonable, and in violation of section 1 of the act to regulate commerce." Reparation in sums aggregating \$2,504.59 is sought, although upon certain shipments claims for reparation are barred by the statute.

The rates on salt from Chicago and from the Michigan and Ohio fields to western points, the circumstances that led to their establishment, and the fixing of the adjustment as between the originating fields have hitherto been considered by us in other cases. *Colonial Salt Co. v. M., I. & I. Line*, 23 I. C. C., 358; *Colonial Salt Co. v. C., B. & Q. R. R. Co.*, 31 I. C. C., 559. The reports in the cases cited present so fully the earlier history of the rate adjustment that no extended recital is necessary here. It is sufficient to recall that at the time when the joint rates between the industry owned boat lines operating on the great lakes and the rail carriers, and the practices thereunder, were before us for investigation in the case first cited, the differential from the Michigan fields over Chicago on traffic to points west of the Missouri River was 2½ cents per 100 pounds, while the differential from the Ohio fields on traffic destined to the same territory was 1 cent per 100 pounds over the rate from the Michigan fields, or, otherwise stated, 3½ cents over the rate from Chicago.

When, in conformity to the views expressed in the case first cited, the carriers canceled the joint rates maintained with the boat lines, they also reduced the rates in effect from Chicago to western points, but made no corresponding reduction from the Michigan or Ohio fields. The reduction in rate from Chicago which became effective July 8, 1912, was 1½ cents per 100 pounds and resulted in increasing the differentials over Chicago to 4 cents on traffic from the Michigan fields and to 5 cents from the Ohio fields.

This situation led to the complaint in the second *Colonial Salt Company Case*, reported in 31 I. C. C., 559, wherein it was alleged among other things that the rates from the Michigan and Ohio fields to points in western states, including those specified in the present case, were unreasonable, in violation of section 1, and unduly prejudicial to the complainants and preferential in favor of Chicago and Milwaukee in violation of section 3 of the act. Although unreasonableness was alleged of the rates complained of in the latter case, it clearly appeared that the gravamen of the charge was the discrimination and undue preference alleged to have resulted from the changed relationship in the rates, and it developed that it was immaterial to the complainant how the relationship should be restored, whether by increasing the Chicago rates or reducing those from Michigan and Ohio. 31 I. C. C., 561. After an exhaustive inquiry into the matter we held, page 570:

30 I. C. C.

The present situation has been brought about by the action of the western carriers in making preferential rates from the lake ports while at the same time they publish or concur in through rates from the Michigan and Ohio fields which are apparently upon a reasonable basis. It is our opinion that the discrimination here shown to exist should be removed by the publication of rates from the Michigan field which will not exceed by more than $2\frac{1}{2}$ cents the rates contemporaneously maintained from Chicago and from Chicago rate points to the same destinations.

In this discussion we have referred only incidentally to the rates from Ohio, but it is to be understood that no change should be made in the present relationship in the rates as between the Ohio and Michigan fields.

The complainants in that case sought reparation, but that part of the prayer was denied, no damage having been proven by them.

Effective January 1, 1915, the carriers, under authority given by our decision in *The Five Per Cent Case*, 31 I. C. C., 351, increased the rates from the Michigan and Ohio fields. The rates from the Michigan fields were increased 1 cent per 100 pounds, the tariff providing that the rates from the Ohio fields should be 1 cent over the Michigan rate. Contemporaneously the rates from Chicago were increased $2\frac{1}{2}$ cents per 100 pounds. As a net result of these changes the differential in the rate from the Michigan and Ohio fields was narrowed to $2\frac{1}{2}$ and $3\frac{1}{2}$ cents, respectively, thereby conforming the differential basis to the requirements of the order issued in the later *Colonial Salt Company Case*. The relationship between the Michigan and Ohio fields being determined, it will hereinafter be understood that reference to the Michigan fields includes Ohio.

The complainant alleges, as already noted, that the rates applicable to the transportation of the shipments in question were unreasonable, in violation of section 1 of the act. It does not specifically allege that section 3 was violated. Nevertheless the case is wholly one arising out of a rate adjustment which was condemned in the *Colonial Salt Company Case*, as being unduly preferential to Chicago and therefore in violation of section 3 of the act, and being so presented upon the hearing we must examine into the sufficiency of the pleadings.

Upon the hearing of the case attention was directed to the changed situation brought about as a result of the readjustment of the rates, and counsel for the complainant stated that he did not purpose raising any question as to the present rates, expressed satisfaction with the readjustment, and admitted that there was nothing remaining in the case except the claim for reparation. While the averments of the complaint fail to state in technical terms an issue under section 3, it can not be said that the statement of facts as embodied in the complaint leaves any doubt of the intention to raise such an issue. The Commission's Rules of Practice do not require strict conformity to the technical rules of pleading. They do require, however, that complaints shall conform to the more elementary requirements of

pleading; that they shall be so sufficient, clear, and certain in their averments that the Commission may be informed of the issues and the carriers fully advised of the nature and extent of the case they are called upon to defend. The carriers in their answers do not demur to the obvious technical defect in pleading. They made no objection at the time of hearing to the introduction of testimony the avowed purpose of which was to prove damages by discrimination. In view of the manner in which defendants' counsel have met the real issue it can scarcely be seriously contended that they were not fully advised of the nature and full extent of complainant's case.

No evidence bearing upon the reasonableness of the rates was introduced. The testimony relates wholly to the discrimination and the loss which complainant conceives it sustained by reason of the changed relationship of rates. Having already found that the rate adjustment complained of was unduly preferential to Chicago and discriminatory against the Michigan fields, 31 I. C. C., 559, 570, the only question before us for determination here is whether or not complainant was damaged thereby and, if so, whether it is entitled to reparation.

Complainant's transactions were those of a broker. Its practice was to purchase the salt for its own account and have the same consigned in carload lots direct to its customers in Nebraska and the other western states. In making up invoices for its sales it allocated the freight charges per barrel, or per sack, adding the same to the base price, i. e., the purchase price of the sale, f. o. b. shipping point. The consignee receiving the shipment would pay the freight charges to the delivering carrier and, in settlement of his account with complainant, would receive credit for such charges. Thus it appears, and the complainant so asserts, that the salt was sold on a basis delivered to the western consignee. Complainant was in keen competition not only with shippers from Chicago and Milwaukee, but, as stated by its witness, with about every manufacturer of salt in Michigan, also with shippers of salt from Kansas and Salt Lake City. Its principal competition in the sale of Michigan salt, however, seems to have come from the Morton Salt Company, of Chicago, a manufacturer and shipper of both Michigan and Kansas salt.

Complainant as a broker was presumably free to purchase salt wherever it pleased. Its theory, however, seems to be that it was precluded from shipping salt from Chicago on equal terms with its competitors and, being compelled to ship from Michigan, was damaged by the reduction in rates from Chicago through having to shrink its sale price in Nebraska commensurately if it "expected to do any business." But while it was complainant's custom to buy direct from shippers in Michigan, it developed upon the hearing that, during

the time when the rate adjustment complained of was in effect, complainant bought large quantities of salt from its alleged competitors in Chicago. The reparation claim covers more than 370 carloads. A statement which, by agreement, was filed of record subsequent to the hearing shows that during the period from September, 1913, to December, 1914, a total of 213 cars, or more than half as many as those covered by the reparation claim, was purchased from its alleged competitors in Chicago and shipped to points in Nebraska or other western destinations. These shipments, or at least some of them, were purchased at a price f. o. b. Chicago, though shipped from Michigan points.

If the complainant, by reason of the reduction in rates from Chicago, sustained a corresponding loss upon its shipments from Michigan, it would imply (1) that all shipments upon which reparation is claimed were made direct from Michigan points; (2) that the reduction in the freight rate from Chicago was the only factor affecting complainant's selling price in Nebraska and other western destinations, and collaterally we should have to assume (3) that the base price of the salt at the respective shipping points remained constant, or at least relatively unchanged.

The evidence shows that none of these premises can be assumed. Complainant's witness testified that the base price at the Michigan works ranged from 75 cents up to 90 cents per barrel during the time in question, and that the reduction in the selling price made by the Chicago shippers did not, as a matter of fact, always correspond with the reduction in rates from Chicago. The price of eastern salt fluctuated considerably during the period in question and seems generally to have been decreasing, due principally, as we infer from the testimony, to competition of Kansas salt.

The selling unit, which, for the purposes of this case, is a barrel of salt, weighs 300 pounds, and the reduction of $1\frac{3}{4}$ cents in the freight rate from Chicago was therefore equivalent to 5 cents per barrel. Soon after the reduction in the rate from Chicago, which brought the differential as against Kansas salt down to 2 cents per barrel in some instances, complainant found that Chicago competitors were offering Michigan salt on the flat Kansas basis throughout Nebraska, notwithstanding such a reduction in the selling price exceeded the rate reduction in all instances and often exceeded it in considerable degree.

The southeastern part of Nebraska is geographically tributary to the Kansas salt fields. The differential in favor of the Kansas salt as against the eastern salt was greater to other sections of Nebraska more remote from the Kansas fields. The testimony

shows a somewhat anomalous situation in the fact that the southeastern section of Nebraska nearest to the Kansas salt fields preferred Michigan salt, while the more remote sections of Nebraska to which the differential was at least more favorable to Michigan salt, preferred the Kansas commodity. It had been complainant's custom to meet Kansas competition in southeastern Nebraska by shrinking its prices on Michigan salt from 7 cents to 10 cents per barrel. It had not customarily met the full amount of the Kansas differential except at points where the latter was 7 cents or less per barrel. At points where the differential in favor of Kansas salt was as much as 15 or 20 cents per barrel, complainant had been accustomed, before the rate reduction, to shrink its price 10 cents. After the reduction, in order to meet the prices of its Chicago competitors, complainant did, in some instances, shrink its prices as much as 18 to 23 cents per barrel.

Complainant itself was actively engaged in the handling of Kansas salt, and, during the time from the change in the freight rates to the filing of the complaint herein, 50 per cent of its business consisted of Kansas salt. It did not always adhere to its own base prices because, in meeting Kansas competition, it would sometimes put Michigan salt in competition with Kansas salt by absorbing a part of the freight charges on the eastern salt.

The reparation claim purports to cover only shipments made by complainant direct from Michigan fields. At least one of the shipments listed in the claim, however, was purchased from the Morton Salt Company at a price f. o. b. Chicago. The Morton Salt Company shipped the particular salt mentioned from Port Huron, Mich., to Wabash, a point in southeastern Nebraska served by the Missouri Pacific Railway, and to which the differential in freight rates was, according to the testimony, about 18 cents per barrel in favor of Kansas salt as against Michigan salt. Explaining this transaction, complainant's witness stated that salt could not be shipped from Detroit to the latter point without loss—

and therefore it was necessary that we arrange for some supply of salt that could be furnished through Chicago gateway at the same basis as Chicago shippers had quoted.

Concerning the selling price of salt bought from the Morton Salt Company, witness said:

They expect us to get as much as anyone else is asking for it. If we go out here and cut the price of their salt, I suppose they would cut us off.

Explaining further his company's relations with the Chicago shippers, witness stated:

We were buying salt from the Morton Salt Company on a certain basis of price, which was fixed from time to time, less a certain discount to us as a jobber.

20 I. C. C.

These prices were on a sliding scale, and the discount was supposed to cover complainant's profit. Complainant would, if possible, and the record justifies the assumption that it sometimes did, sell so advantageously as to gain something in addition to the discount. Again, it might, in order to meet competition, make a price that would encroach upon the margin represented by the discount. In other words, complainant was unable to sell at every point on the same basis.

Complainant's witness testified that its Chicago competitors published list prices for the use of their salesmen, but it seems the salesmen had a certain discretion in fixing delivered prices and might shrink the list prices 5 or 10 cents per barrel. Witness did not know to what extent the salesmen might have departed from the list prices, but it does appear from the same witness's testimony that the Nebraska selling price of Chicago competitors fluctuated as much as 20 cents per barrel.

Many other phases of the competitive situation in Nebraska, as developed on the record, might be cited. To do so, however, would but serve to extend this report unnecessarily. It satisfactorily appears from what has been said, and from the record as a whole, that complainant was not limited to Michigan fields as the sources of its supply; that it could purchase salt freely in Chicago, and apparently on the same basis as other shippers; that it did upon occasion so purchase and ship from Chicago when an advantage lay in so doing; that the differential in freight rates from Kansas fields was often a controlling factor in determining the price at which eastern salt could be sold in Nebraska and whether it could be more advantageously shipped from Chicago or from Michigan. It is impossible to ascertain from the record to what extent Chicago's preferential basis was alone responsible for the reductions which complainant made in its selling prices. Its margin of profit varied, and it is not shown that it ever sold at a loss.

The evidence leaves it extremely doubtful whether complainant did in fact suffer damage by reason of the preference given Chicago during the period within which the shipments moved. Notwithstanding keen competition from powerful competitors, its business has steadily increased.

In a case predicated upon unjust discrimination in rates, the damage suffered, if any, is not always measurable by the exact difference in rates; it may be more or less. Mere diminution or loss of prospective trade profits does not alone afford a basis for reparation under the act to regulate commerce. The fact of damage as well as the amount of damage must be satisfactorily established. *Penna.*

R. R. Co. v. International Coal Co., 230 U. S., 184; *New Orleans Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 32.

The Commission is not justified in awarding damages in any case except upon a basis as certain and definite in law and in fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another. *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 43, 49.

The proof offered fails to meet these requirements of the law. The complaint must therefore be dismissed, and it will be so ordered.

No. 8025.

GOLDCAMP MILL COMPANY

v.

NORFOLK & WESTERN RAILWAY COMPANY.

Submitted December 17, 1915. Decided May 22, 1916.

Defendant's rates on grain, grain products, and hay in carloads and less than carloads from Ironton, Ohio, to points on defendant's line in West Virginia, Naugatuck to Bluefield, inclusive, found to be unreasonable. Reasonable maximum rates prescribed for the future. Reparation denied.

Henry G. Binns for complainant.

R. Walton Moore and *Charles D. Drayton* for defendant.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

By petition, filed May 17, 1915, complainant, a milling company located at Ironton, Ohio, alleges that defendant's carload and less-than-carload rates on grain, grain products, and hay from Ironton to 52 stations on its line in West Virginia, Naugatuck to Bluefield, both inclusive, are unreasonable and unjustly discriminatory. Reparation and the establishment of certain rates alleged to be reasonable are asked. Rates are stated herein in cents per 100 pounds.

Ironton is on defendant's main line, 134 miles east of Cincinnati, Ohio, 127 miles south of Columbus, Ohio, and 12 miles north of Kenova, W. Va. The distances from Ironton to Naugatuck and to Bluefield are 96 miles and 217 miles, respectively. In addition to the Norfolk & Western, the Chesapeake & Ohio, Cincinnati, Hamilton & Dayton, and Detroit, Toledo & Ironton railroads reach Ironton.

39 I. C. C.

Complainant, or its predecessors, have operated a mill at Ironton since 1869, which date is prior to the construction of defendant's line to that point. Complainant manufactures flour, meal, and feeds, and deals in hay and grain. Its principal market is in the territory known as the "Norfolk & Western West Virginia coal field," and its customers are coal operators therein. However, it has very little, if any, business at any stations between Welch and Bluefield, which territory is said to be served by millers at Bluefield. Complainant's inbound shipments of grain and hay are in carloads, and while its outbound shipments are principally less than carloads of grain and grain products and mixed carloads of grain, grain products, and hay, its outbound carload shipments are considerable. The total capacity of the mill is approximately 175 barrels per day of flour and meal. Complainant has milling in transit at Ironton and draws its grain largely from points on defendant's line between Ironton and Columbus and from points on the Cincinnati, Hamilton & Dayton and the Detroit, Toledo & Ironton roads east of Washington Court House, Ohio. It has occasional shipments from Chicago and points in central freight association territory beyond defendant's line. Its hay is purchased principally in the Washington Court House district and in Michigan. Its principal competitors are located at Cincinnati, Columbus, and other points in Ohio north of Ironton, and at Bluefield.

The following table shows the distances and the present rates on the different commodities in issue from Ironton, Columbus, and Cincinnati to 10 of the destination points, which are representative. It also shows the rates in effect from May 15, 1912, to February 25, 1915, as well as those prior to May 15, 1912. The reason for showing rates other than those now in effect will appear later in the report:

30 I. C. C.

	Miles.	From Ironton, Ohio.					Miles.	From Columbus, Ohio.					From Cincinnati, Ohio.				
		Grain, C. L.	Grain products, C. L.	Grain and hay, C. L.	Grain and products, L. C. L.	Hay, L. C. L., third class.		Grain, C. L.	Grain products, C. L.	Grain and products, L. C. L.	Grain and hay, C. L.	Hay, L. C. L., third class.	Grain, C. L.	Grain products, C. L.	Grain and products, L. C. L.	Grain and hay, C. L.	Hay, L. C. L., third class.
Naugatuck, W. Va. Rates in effect prior to May 15, 1912. Rates established May 15, 1912. Rates established Feb. 25, 1915, and in effect.	96	13.0 12.5 13.3	13.0 13.0 13.7	16.0 16.0 16.8	29.0 29.0 30.5	223	220	16.0 12.5 13.3	16.0 13.0 13.8	20.0 20.0 21.0	36.0 36.5 37.3	230	16.0 12.5 14.9	16.0 13.0 15.4	20.0 20.0 21.0	36.0 36.5 37.3	
Williamson, W. Va. Rates in effect prior to May 15, 1912. Rates established May 15, 1912. Rates established Feb. 25, 1915, and in effect.	110	13.0 12.5 13.3	13.0 13.0 13.7	16.0 16.0 16.8	31.0 31.0 32.6	237	244	17.0 12.5 13.3	17.0 13.0 13.8	21.0 20.0 21.0	37.0 36.5 37.3		17.0 12.5 14.9	17.0 13.0 15.4	21.0 20.0 22.1	37.0 36.5 38.9	
Thatcher, W. Va. Rates in effect prior to May 15, 1912. Rates established May 15, 1912. Rates established Feb. 25, 1915, and in effect.	124	14.0 12.5 13.3	14.0 13.0 13.8	17.0 17.0 17.9	33.0 33.0 34.7	261	268	17.5 12.5 13.3	18.0 13.0 13.8	22.0 20.0 21.3	38.0 36.5 37.4		18.0 12.5 14.9	18.0 13.0 15.4	22.0 20.0 23.1	38.0 36.5 39.9	
Devon, W. Va. Rates in effect prior to May 15, 1912. Rates established May 15, 1912. Rates established Feb. 25, 1915, and in effect.	133	14.0 12.5 13.3	14.0 13.0 13.8	18.0 18.0 18.9	33.0 33.0 34.7	260	267	17.5 12.5 13.3	18.0 13.0 13.8	22.0 20.0 21.3	38.0 36.5 37.4		18.0 12.5 14.9	18.0 13.0 15.4	22.0 20.0 23.1	38.0 36.5 39.9	
Panther, W. Va. Rates in effect prior to May 15, 1912. Rates established May 15, 1912. Rates established Feb. 25, 1915, and in effect.	151	14.0 12.5 13.3	14.0 13.0 13.8	18.0 18.0 18.9	33.0 33.0 34.7	278	285	17.5 12.5 13.3	18.0 13.0 13.8	22.0 20.0 21.3	38.0 36.5 37.4		18.0 12.5 14.9	18.0 13.0 15.4	22.0 20.0 23.1	38.0 36.5 39.9	
Redfield, W. Va. Rates in effect prior to May 15, 1912. Rates established May 15, 1912. Rates established Feb. 25, 1915, and in effect.	167	15.0 12.5 13.3	15.0 13.0 13.8	19.0 19.0 20.0	34.0 34.0 35.7	294	301	17.5 12.5 13.3	18.0 13.0 13.8	24.0 20.0 21.3	40.0 38.5 37.4		19.0 12.5 14.9	19.0 13.0 15.4	25.0 20.0 24.4	40.0 38.5 42.0	
Wilder, W. Va. Rates in effect prior to May 15, 1912. Rates established May 15, 1912. Rates established Feb. 25, 1915, and in effect.	181	15.0 12.5 13.3	15.0 13.0 13.8	19.0 19.0 20.0	34.0 34.0 35.7	308	315	17.5 12.5 13.3	18.0 13.0 13.8	25.0 20.0 21.3	40.0 38.5 37.4		19.0 12.5 14.9	19.0 13.0 15.4	25.0 20.0 24.4	41.0 39.5 42.7	
Kayne, W. Va. Rates in effect prior to May 15, 1912. Rates established May 15, 1912. Rates established Feb. 25, 1915, and in effect.	193	15.0 12.5 13.3	15.0 13.0 13.8	19.0 19.0 20.0	35.0 35.0 36.8	320	327	17.5 12.5 13.3	18.0 13.0 13.8	25.0 20.0 21.3	41.0 39.5 37.4		19.0 12.5 14.9	19.0 13.0 15.4	25.0 20.0 24.4	41.0 39.5 42.7	
Graham, Va. Rates in effect prior to May 15, 1912. Rates established May 15, 1912. Rates established Feb. 25, 1915, and in effect.	214	16.0 12.5 13.3	16.0 13.0 13.8	20.0 20.0 21.0	36.0 35.5 37.3	341	348	17.5 12.5 13.3	18.0 13.0 13.8	26.0 20.0 21.3	42.0 39.5 37.4		19.0 12.5 14.9	19.0 13.0 15.4	27.0 20.0 24.4	42.0 39.5 42.7	
Bluefield, W. Va. Rates in effect prior to May 15, 1912. Rates established May 15, 1912. Rates established Feb. 25, 1915, and in effect.	217	16.0 12.5 13.3	16.0 13.0 13.8	20.0 20.0 21.0	36.0 35.5 37.3	344	351	17.5 12.5 13.3	18.0 13.0 13.8	26.0 20.0 21.3	42.0 39.5 37.4		19.0 12.5 14.9	19.0 13.0 15.4	27.0 20.0 24.4	42.0 39.5 42.7	

The carload rates on grain and grain products, with but one or two exceptions, are commodity rates, which are lower than the sixth-class rates. The carload rates on hay and the less-than-carload rates on grain and grain products are fifth-class rates. The less-than-carload rates on hay are third-class rates. The distances used by complainant are in each instance 24 miles less than those shown above. It appears that between Kenova and Naugatuck defendant has two lines; one known as the Twelve Pole line and the other as the Big Sandy line. For many years defendant operated its trains east-bound and westbound over the Twelve Pole line. When conditions warranted a double track it built the new line from Kenova to Naugatuck along the Big Sandy River because of the shorter distance and better operating conditions. The new line was opened for west-bound traffic, as the heavy movement is in that direction. Complainant insists that the distances to the destinations in question should be computed over the shorter line. Defendant urges that the distances over the longer line should be used and states that 95 per cent of the eastbound tonnage moves via the Twelve Pole line. We think it proper, therefore, to use the distances via the longer route.

It appears that this complaint resulted principally from the readjustment of rates made following our decision in *Bluefield Shippers Asso. v. N. & W. Ry. Co.*, 22 I. C. C., 519, hereinafter referred to as the *Bluefield Case*. It is proper, therefore, to refer to that case at this point in order that the issues may be clearly understood.

In the *Bluefield Case* the rates on the classes and on grain and grain products from Columbus and Cincinnati to Bluefield were attacked as unreasonable and in violation of the fourth section. The rates at that time were:

To Bluefield from—		2	3	4	5	6	Grain.	Grain prod- ucts.
Columbus.....	66.5	55.0	42.0	31.0	26.0	21.0	17.5	18.0
Cincinnati.....	68.0	55.0	42.0	32.0	27.0	22.0	19.0	19.5

We found that these rates were unreasonable and prescribed as reasonable maximum rates from both Cincinnati and Columbus to Bluefield on the respective classes: 54.5, 47, 35.5, 24, 20, 16, on grain 12.5, and on grain products 13. These rates were the same as defendant's rates from Columbus to Roanoke and the other Virginia cities. Under the fourth section application which was heard with the complaint our order, as subsequently modified, permitted defendant to charge from Cincinnati and Columbus to Roanoke and points east thereof lower rates on the classes and on grain and grain products than to intermediate points on its line, but from these points of origin

to intermediate points west of Bluefield the rates to Bluefield were not to be exceeded.

As a result of that case the rates from Ironton to Bluefield were reduced in the following amounts: Grain in carloads, $3\frac{1}{2}$ cents; grain products in carloads, 3 cents; hay in less than carloads, one-half cent. There was no reduction in the fifth-class rate under which grain products in less than carloads and hay in carloads move. The only reduction made in the rates from Ironton to Naugatuck was one-half cent on grain in carloads. The effect of the readjustment as applied by defendant was to make the rates on grain and grain products in carloads from Ironton to all stations, Naugatuck to Bluefield, both inclusive, the same as the rates prescribed from Columbus and Cincinnati to Bluefield.

After the amendment of our fourth section order in the *Bluefield Case* defendant not only increased the rates from Cincinnati, Columbus, and Ironton to the destinations in question 5 per cent, but increased the rates from Cincinnati over the rates from Columbus and Ironton by the amount of the difference between the rates from Cincinnati and Columbus to the Virginia cities. This action was not clearly explained at the hearing, but on argument counsel for defendant stated that prior to our decision in the *Bluefield Case* the rates from Cincinnati to the Virginia cities were on the basis of 87 per cent of the Chicago-New York rates, while Columbus was a 77 per cent point, and that in making the readjustment to Bluefield and intermediate points Cincinnati was restored to the old basis and the rates from Cincinnati to Bluefield and intermediate points were made the same as the rates from Cincinnati to Roanoke. We specifically found, however, in the *Bluefield Case* that the rates from Cincinnati and Columbus to Bluefield should be the same.

Complainant contends that by this method of complying with our order in that case defendant deprived Ironton of the benefit of its location by including it in a blanket adjustment with Cincinnati and Columbus. It urges that it is 127 miles nearer to any one of the destinations in question, and that such a difference in distance in a maximum haul of 344 miles from Columbus to Bluefield and a minimum haul of 223 miles from Columbus to Naugatuck should be recognized by substantially lower rates from Ironton. It points out that the hauls are over the same line in the same direction, the shorter included within the longer. It also insists that by failing to make a relative adjustment in the rates from Ironton at the time of the reduction of the rates from Cincinnati and Columbus defendant unduly discriminated against complainant, its business, and the city of Ironton, and unduly preferred complainant's competitors and shippers at Cincinnati, Columbus, and other points between Ironton and Columbus.

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It is shown that for a long period prior to May 15, 1912, Ironton had rates to this territory that were lower than those from Columbus or Cincinnati. From May 1, 1907, to February 1, 1910, rates from Ironton to Bluefield were less than from Columbus or Cincinnati by the following amounts:

Ironton under—	Grain and grain products, C. L.	Grain and grain products, L. C. L., hay, C. L.	Hay, L. C. L.
Columbus.....	1.0	6.0	6.0
Cincinnati.....	2.5	7.0	6.0

From February 1, 1910, to May 15, 1912, Ironton had rates lower than Columbus and Cincinnati by the following amounts:

Ironton under—	Grain, C. L.	Grain products, C. L.	Grain and grain products, L. C. L., and hay, C. L.	Hay, L. C. L.
Columbus.....	1.5	2.0	6.0	6.0
Cincinnati.....	3.0	3.5	7.0	6.0

Complainant shows that there are 42 commodities, including lumber, live stock, fertilizer, tankage, bone dust, common brick, fire brick, cement, building lime, coal tar, draintile paving brick, building blocks, cinders, coal furnace slag, salt, ice, coal ashes, wood ashes, manure, marl, land plaster, etc., on which defendant maintains lower carload rates from Ironton to Bluefield and intermediate points than from Columbus to the same points. The differences between the rates from these two points vary from a maximum of 8 cents per 100 pounds to a minimum of 1 cent per 100 pounds. It appears that there are 11 commodities, including coal and wood ashes, bones and bone dust, fertilizer, agricultural lime, marl, land plaster, and tankage, on which defendant maintains lower rates in less-than-carload lots from Ironton to Bluefield and intermediate points than from Columbus to the same points. It is also shown that westbound the rates on coal from Norfolk & Western coal fields vary with points of origin and are lower to Ironton than to Columbus. With respect to these commodities, defendant points out that rates on many of them, notably lumber, live stock, etc., are higher than rates on grain, grain products, and hay from Ironton, and also from Columbus. It insists that when account is taken of the class of traffic, together with other questions that must be considered, the rates on the commodities referred to by complainant are to be regarded in every instance as materially higher in a relative sense than are the rates on grain,

grain products, and hay. Complainant admits that generally the commodities named by it are low grade as compared with grain and grain products, but argues that the relative adjustment as between Ironton and Columbus on these commodities indicates what should be the minimum difference in rates. Defendant shows that between points on its lines north and south of the Ohio River there is no important movement of the commodities named by complainant, and still less movement between stations in central freight association territory beyond defendant's line and stations on its lines south of the Ohio River. It is asserted that many of the articles do not move at all and have no place in the tariff. Defendant further contends that the adjustments cited are separate and distinct from the central freight association-trunk line adjustment, while the rates on grain, grain products, and hay are a part of that adjustment and can not be divorced therefrom.

Complainant shows that its business in the West Virginia coal region increased steadily from 1893 to 1912, since which time it has materially decreased with respect to solid carload traffic; and that the less-than-carload and mixed carload business has not decreased, but has been maintained, it is asserted, at a sacrifice.

As stated, milling in transit is accorded complainant at Ironton. When shipments of whole grain or products thereof are made outbound, either in carloads or less than carloads, complainant, in common with its competitors, has transit authorizing the application of the through rate from point of origin to destination. This transit attaches to all grain originating on the lines of defendant north and west of Ironton, and also on grain originating at points beyond defendant's rails to the extent that tariffs of the initial carriers permit. The transit charge is one-half cent on carload shipments and 1½ cents on less than carloads. Transit is not permitted on mixed carloads of grain, grain products, and hay. Such shipments are subject to rule 10 of the official classification and are, therefore, rated the same as hay, and take the carload minimum weight applicable to hay. No shipper other than complainant engages to any material extent in shipping mixed carloads of grain, grain products, and hay on the lines of defendant north of the Ohio River.

To show that the rates from Ironton are unreasonable, complainant compares earnings on the commodities shipped by it with earnings on the same traffic from Cincinnati and Columbus. Its figures, however, are based on the distances via defendant's short line. We have compiled the following table, which shows such a comparison via defendant's longer line to Naugatuck, Roderfield, and Bluefield.

Commodity.	To Naugatuck.				To Roderfield.				To Bluefield.			
	Miles.	Rate.	Earnings per car-mile.	Earnings per ton-mile.	Miles.	Rate.	Earnings per car-mile.	Earnings per ton-mile.	Miles.	Rate.	Earnings per car-mile.	Earnings per ton-mile.
Grain from—		<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>		<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>		<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>
Columbus.....	223	13.3	36	12.0	294	13.3	27	9	344	13.3	23	8
Cincinnati.....	230	14.9	39	13.0	301	14.9	30	10	351	14.9	25	9
Ironton.....	96	13.3	33	28.0	167	13.3	48	16	217	13.3	38	12
Grain products from—												
Columbus.....	223	13.8	25	12.0	294	13.8	19	9	344	13.8	16	8
Cincinnati.....	230	15.4	27	13.0	301	15.4	20	10	351	15.4	17	9
Ironton.....	96	13.7	37	28.5	167	13.8	33	16	217	13.8	23	12
Hay from—												
Columbus.....	223	21.0	19	19.0	294	21.3	14	14	344	21.3	12	12
Cincinnati.....	230	21.0	18	17.0	301	24.4	16	16	351	24.4	14	14
Ironton.....	96	16.8	33	35.0	167	20.0	24	24	217	21.0	19	19

The per car earnings in the above table are based on minimum weights of 60,000 pounds on grain, 40,000 pounds on grain products, and 20,000 pounds on hay. It will be noted that the rates on grain from Ironton to Bluefield, Roderfield, and Naugatuck yield per ton-mile revenues of 12 mills, 16 mills, and 28 mills, respectively. The rate on grain from Columbus to Bluefield, prior to our decision in the *Bluefield Case*, was 17.5 cents, yielding a per ton-mile revenue of approximately 10 mills. The present rate on grain to Bluefield from Columbus yields a per ton-mile revenue of 8 mills. The average distance from Ironton to all the destinations in question is stated by defendant to be 164 miles. This is approximately the distance from Ironton to Roderfield, and the earnings to that point may be taken as fairly representative of the average earnings to all the destinations. It will be noted that the per car-mile earnings on grain, grain products, and hay from Ironton to Roderfield are 48 cents, 33 cents, and 24 cents, respectively. These are more than 40 per cent higher than the earnings on the rates for the same commodities from Columbus.

Defendant explains that generally the rates from Ironton and other Norfolk & Western stations north of the Ohio River to stations on its line east of Kenova and west of Salem, Va., are made differentials over the rates to Virginia cities, subject to certain class-rate mileage scales and lower combinations on the Ohio River, which are observed as maxima. These differentials on the classes are 12, 10, 8, 7, 6, and 5. The sixth-class differential appears to apply on commodities moving under rates lower than sixth class. It is asserted that the combination on the Ohio River is not a factor in making rates to any of the territory in question, and that the class mileage scale just referred to makes the rates on grain, grain products, and hay, in less than carloads, and on hay in carloads, from Ironton to stations on defendant's main line as far east as Falls

Mills, W. Va., which is the third station west of Bluefield. It also makes the rates on grain products in carloads as far east as Williamson, W. Va., 110 miles east of Ironton.

It is well understood that the Norfolk & Western has for a long period applied the central freight association-trunk line basis of rates eastbound. The rates from Columbus, Cincinnati, and Ironton to the Virginia cities are so constructed. This adjustment has been explained in many cases, particularly in *Saginaw Board of Trade v. Grand Trunk Ry. Co.*, 17 I. C. C., 128, and the *Bluefield Case*, *supra*, and need not be repeated here. Defendant urges that the rates from Ironton to Virginia cities are, in effect, lower than the trunk line basis, because under that adjustment Ironton is an 87 per cent point. In constructing rates to the Virginia cities, however, it is accorded rates no higher than Columbus, a 77 per cent point, because it is intermediate thereto. Defendant urges that this basis of rates to the Virginia cities is low and that it is reflected in the adjustment from Ironton to the destinations in question because the rates to this territory are, as stated, made differentials over those rates.

Defendant insists that the rates from Ironton have never been differentially adjusted under Columbus, and that when they have been lower than the rates from Columbus and Cincinnati it has been because the class mileage scale resulted in lower rates than the differential basis. It is urged that the rates from Columbus are low and that since the rates from Ironton are in many instances lower than the rates in effect prior to May 15, 1912, the present adjustment is not unreasonable or unjustly discriminatory.

Complainant asks that defendant be required to establish and maintain from Ironton to Bluefield the following rates, which should be scaled to intermediate points: Grain, carloads, 10 cents; grain products, carloads, 10.5 cents; grain products, less than carloads, 14 cents; hay, carloads, 14 cents; hay, less than carloads, 29 cents. Defendant asserts that these rates would be lower than the rates from Columbus and Ironton to Bluefield prior to May 15, 1912. It urges that such rates are unduly low; that they are in some instances lower than rates for similar distances in central freight association territory, and in no case materially higher.

Complainant shows that the average revenues per loaded car-mile and per ton-mile on defendant's system for the fiscal years 1911 to 1914 were approximately 13 cents and 4 mills, respectively, and urges that, as the rates from Ironton on these commodities yield greater earnings, they are unreasonable. It also appears that on defendant's Kenova and Pocahontas divisions, extending from Bluefield to Portsmouth, Ohio, the traffic density is greater than on any other part of its system, with the exception of the Norfolk and Scioto Valley divisions.

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sions, and the operating expense is correspondingly low. Complainant argues from this that comparisons of earnings of the rates from Ironton with the average system earnings are of value in determining the reasonableness of the existing rates. While to a certain extent this is helpful, it is in no sense conclusive, as it appears that the greater part of the tonnage on this division consists of coal and coke. For the year ended June 30, 1914, this traffic was 85.3 per cent of the total tonnage handled on the line between Portsmouth and Bluefield.

Complainant insists that defendant's distance scales on grain, grain products, and hay in carloads, one applicable on Virginia intrastate traffic between points on its Norfolk, Shenandoah, Winston-Salem, and Durham divisions and on interstate traffic from Bluefield to points on these divisions, and the other applicable among other points from destinations here considered to stations on its Norfolk and Shenandoah division, should be accepted as a basis of reasonable rates from Ironton. It argues that if these scales are reasonable on defendant's divisions where the traffic is less dense than on its line between Portsmouth and Bluefield, they must necessarily be a measure of reasonable rates from Ironton. If the Virginia intrastate rates, which, as stated, are also applicable interstate from Bluefield eastbound, were applied to carloads from Ironton to the destinations in question, the result, using Naugatuck, Roderfield, and Bluefield as representative, would be as shown below. The distances used are via defendant's longer line. The present carload rates are also shown:

To—	Grain and grain products.		Hay.	
	Distance rates.	Present rates (grain only).	Distance rates.	Present rates.
Naugatuck.....	8.5	12.3	11.5	14.8
Roderfield.....	11.5	13.3	14.5	20.0
Bluefield.....	12.0	13.3	15.0	21.0

The scale which is applicable eastbound from all stations on defendant's lines south of the Ohio River, to and including Bluefield, to destinations in Virginia is slightly higher. This scale if applied from Ironton to the three representative points used above would result in the following carload rates: To Naugatuck, grain and grain products, 8.9, hay, 12.1; to Roderfield, grain and grain products, 12.1, hay, 15.2; to Bluefield, grain and grain products, 12.6, hay, 15.8. It will be noted that, while the distance scales would make rates on grain and grain products from Ironton to Bluefield slightly lower than the present rates, they would make

materially lower rates to the destinations nearer Ironton. It will also be noted that the distance rates on hay are substantially lower than the rates here attacked. Defendant asserts that the commodity distance scales on hay applicable from Virginia and West Virginia stations westbound to the destinations in question, which are slightly higher than the rates in the distance scales just referred to, are too low, and that it is its intention to revise its hay rates so that they will compare favorably with the rates from Ironton.

In *Page Milling Co. v. N. & W. Ry. Co.*, 30 I. C. C., 605, we considered rates on grain products from points on defendant's Shenandoah division to certain territory in Virginia and West Virginia. The rates, which were on a distance scale higher than the scales just referred to, and applicable only westbound, were alleged to be unreasonable and unjustly discriminatory. The points of origin included stations from Charlestown, W. Va., on the north, to Buena Vista, Va., on the south, and the destination territory embraced what is known as "Norfolk & Western coal fields." Buena Vista and Charlestown are 159 and 316 miles, respectively, from Bluefield, and the rates attacked were 12½ and 14½ cents. They have since been increased 5 per cent. Complainants' particular grievance in that case seemed to be that in reducing the rates from Cincinnati, Columbus, and Ironton, at which points were located their principal competitors, after our decision in the *Bluefield Case* and not making similar reductions from their mills, defendant unlawfully discriminated against them. We found that the rates assailed were not shown to be unreasonable or otherwise unlawful. Defendant explains that the distance scale considered in that case, which is applicable, among other points, from its Shenandoah division, was constructed with reference to the rates on grain and grain products from Ohio points to "Norfolk & Western coal territory," and that in making this scale it adopted as maximum the rate which existed at that time from Columbus to any Norfolk & Western station west of Roanoke. It asserts that it is impracticable, as a primary basis, to employ from Ironton to stations south of the Ohio River the commodity distance scale which is applicable to the same destinations from the Shenandoah division, because it would produce a rate of 17.9 cents on grain and grain products in carloads for the haul of 580 miles from Ironton to Norfolk, and 15.2 cents for the haul of 322 miles from Ironton to Roanoke, and it can not successfully compete at Virginia cities under such rates. It asserts that it is forced to employ much lower rates under the central freight association-trunk line adjustment. It urges that it would be unjust to require it to make rates on such a scale for the shorter hauls from Ironton to the coal field territory, when it is not possible to employ such a scale for longer hauls from Ironton to Norfolk,

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Hagerstown, and intermediate points. This argument is of little weight when we consider that the traffic here considered moves eastbound; that defendant's distance rates on grain and grain products eastbound from Bluefield and from destination points in question are on a maximum basis of 12.6 cents and that this rate is applicable for distances over 200 miles.

Sometimes the history of a rate adjustment is illuminating and helpful. It is often desirable and proper to maintain groupings or relative adjustments that have been logically established and consistently maintained. If places A and B are competing in or for the same markets, the fact that the carrier serving them both has elected to make its rates to or from A with regard or relation to the rates to or from another place, and its rates to or from B with regard or relation to the rates to or from still another place, can not be accepted as justification for depriving either A or B of the benefits of its natural location or for unjust discrimination against either A or B. The history of the rates here in issue and the varying bases employed in making the rates to and from these competitive points, together with the varying distance scales of rates adopted by defendant, furnish no justification for the apparent disregard of the natural advantages that belong to Ironton by virtue of its location with respect to the destination points here considered.

From all the facts and circumstances of record we are of the opinion and find that the present rates on the commodities named from Ironton to the destinations in question are unreasonable, and that for the future the following will be reasonable maximum rates, in cents per 100 pounds, from Ironton: To Roderfield and stations intermediate between Ironton and Roderfield, grain, carloads, 11.3 cents; grain products, carloads, 11.8 cents. To Bluefield and stations intermediate between Roderfield and Bluefield, grain, carloads, 12.3 cents; grain products, carloads, 12.8 cents. On grain and grain products, less than carload, and hay, carloads: To Naugatuck, 14.5 cents; to Williamson, 15 cents; to Thacker, 15.5 cents; to Devon, 16 cents; to Panther, 16 cents; to Roderfield, 16.5 cents; to Welch, 17 cents; to Keystone, 17 cents; to Graham, 18 cents; to Bluefield, 18 cents. On hay, less than carloads: To Naugatuck, 27 cents; to Williamson, 27.5 cents; to Thacker, 28 cents; to Devon, 28.5 cents; to Panther, 29 cents; to Roderfield, 29.5 cents; to Welch, 30 cents; to Keystone, 30.5 cents; to Graham, 31.5 cents; to Bluefield, 32 cents. Rates on these commodities to stations embraced within the complaint and not named above must be adjusted in proper relation to the rates found reasonable to the points named and in no case higher than to the next more distant point.

No reparation will be awarded. An appropriate order will be entered.

No. 5585.

W. F. BOARDMAN COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted May 18, 1915. Decided May 19, 1916.

Finding in original report, unreported, that complainants had been overcharged on shipments of gas cooking stoves in carloads from various points east of the Missouri River to San Francisco, Cal., and were entitled to reparation, reversed on rehearing, and claim for reparation denied.

Charles Clifford, Malcolm A. Coles, and Frank K. Clifford for complainants.

T. J. Norton and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

Geo. D. Squires for Southern Pacific Company, Texas & Pacific Railway Company, Union Pacific Railroad, and Oregon-Washington Railroad & Navigation Company.

E. W. Camp and Geo. D. Squires for Denver & Rio Grande Railroad Company and receivers of Western Pacific Railway Company.

Allan P. Matthew for Western Pacific Railway Company and Denver & Rio Grande Railroad Company.

Frank M. Hill for Fresno Traffic Association, intervener.

G. J. Bradley for Merchants & Manufacturers Association, intervener.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In our original report, unreported, we found that during the year 1910 and up to September 14, 1911, the defendants should have applied to shipments of gas cooking stoves from points east of the Missouri River to San Francisco, Cal., a rate of \$1.30 per 100 pounds, minimum 24,000 pounds, or a rate of \$1.50 per 100 pounds, minimum 20,000 pounds, whichever made the lower charge, under the following provisions of transcontinental freight bureau tariffs I. C. C. Nos. 904, 920, and 929:

Stoves (cast iron), cooking, heating (including sheet-iron stoves with cast-iron tops, or cast-iron tops and bottoms, or cast-iron tops, bottoms and linings, or cast-iron ends and linings); laundry stoves, cast iron
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or steel ranges (with or without gas stove attachments); farmers' combination stoves with caldrons for same, and extra cast-iron parts of the above-mentioned articles, min. C. L. weight 24,000 pounds. Rate... \$1.30 per 100

* * * * *

Stove or grates, gas, oil, and gasoline, and ovens, cabinets and extra iron or steel parts of above-mentioned articles; also gas, gasoline, or oil water heaters (not instantaneous), boxed or crated, min. C. L. weight 20,000 pounds. Rate..... \$1.50 per 100

NOTE.—The above rate will apply on combination steel ranges and gas cooking stoves.

We further found that complainants had been damaged to the extent that the charges paid by them exceeded those that would have accrued at the rates stated, and that for the future the rate on gas cooking stoves, not skeleton frame, when crated, from points east of the Missouri River to San Francisco should not exceed the rate contemporaneously applicable to wood and coal burning stoves or combination stoves.

No order awarding reparation was entered, but complainants were advised to submit a statement of shipments upon which they were entitled to reparation under our findings. Defendants were advised that they would be expected to amend their tariffs in accordance with our findings.

The case is now before us upon a petition for rehearing filed by the defendants, and we are asked to reconsider and reverse our finding that a rate of \$1.30 named in the first item was applicable to gas cooking stoves.

At the rehearing Frank M. Hill intervened on behalf of the Fresno Traffic Association, while G. J. Bradley intervened on behalf of the Merchants and Manufacturers' Association of Sacramento.

Additional evidence is before us and upon a further careful consideration of all of the facts now of record, we are constrained to hold that in view of the specific rate of \$1.50 named in the last tariff item above quoted the rate of \$1.30 named in the first item was not applicable to gas cooking stoves. We also find that charges based on the rate of \$1.50 are not shown to have resulted in damage to complainants.

After the first hearing defendants established a rate of \$1.30 per 100 pounds, minimum 24,000 pounds, on coal or wood burning and gas cooking stoves and on combined coal or wood and gas burning stoves, which rate is still in effect.

An order dismissing the complaint will be entered.

No. 6332.

J. H. WILKES & COMPANY

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY
ET AL.

Submitted February 11, 1916. Decided May 19, 1916.

Claim for reparation on 26 carloads of blackstrap molasses shipped from Mobile, Ala., to Nashville, Tenn., dismissed because complainant has not proven that it was damaged by the payment of a rate which was found to be unduly prejudicial.

T. M. Henderson for complainant.

Claude Waller and Fitzgerald Hall for Nashville, Chattanooga & St. Louis Railway.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In our original report, unreported, we found that the rate of 21 cents per 100 pounds maintained by defendants on imported blackstrap molasses, in tank cars, from Mobile, Ala., to Nashville, Tenn., was unjustly discriminatory to the extent that it exceeded the rate contemporaneously in effect on like traffic from Mobile to St. Louis, Mo. An order was entered requiring defendants, on or before August 1, 1915, to establish and thereafter to maintain to Nashville a rate not in excess of the rate contemporaneously maintained to St. Louis. On August 9, 1915, complainant filed a supplemental complaint against the Mobile & Ohio Railroad and the Nashville, Chattanooga & St. Louis Railway, carriers defendant in the original complaint, asking reparation on certain carloads of blackstrap shipped over their lines from Mobile to Nashville.

Complainant shipped 26 tank cars of blackstrap from Mobile to Nashville during the period from January 27, 1914, to June 21, 1915. The shipments aggregated 2,368,804 pounds, and complainant paid and bore charges thereon in the sum of \$4,968.19 at the 21-cent rate. Reparation is asked in the sum of \$1,414.98, which represents the difference between the charges paid and the charges that would have accrued at a rate of 15 cents, which was the rate contemporaneously in effect from Mobile to St. Louis. The reasonableness of the rate charged is not in issue, and the sole question for determination is

whether complainant is entitled to reparation on account of undue prejudice to Nashville in favor of St. Louis.

Blackstrap molasses is one of the ingredients of animal and poultry feeds which complainant manufactures at Nashville and sells to consumers in Tennessee, the Carolinas, Georgia, Florida, and Alabama. Complainant's principal competitors are located at St. Louis and at Ohio River crossings. The prices which complainant gets for its products delivered in the southeast are largely controlled by the prevailing prices of its competitors. During the period transit service placed complainant on a parity with its competitors with respect to rates to the territory of destination on all ingredients of the feeds except molasses. But as complainant put 300 pounds of molasses into each ton of feed, the advantage of 6 cents per 100 pounds which its St. Louis competitors had in the rates on blackstrap meant a disadvantage to complainant of 18 cents per ton of feed.

Complainant's feeds are made of corn, cracked corn, alfalfa meal, oats, and blackstrap molasses. The ingredients used by the St. Louis manufacturers are not shown, and we can not assume that they are the same as complainant uses or, if they are, that they are used in identical proportions. There is no showing that complainant had to shrink its profits on all or any particular portion or portions of the feeds in which the molasses involved was used in order to effect sales in competition with manufacturers at St. Louis. Complainant's testimony is that it was advised from time to time by certain of its brokers that its prices were out of line with St. Louis prices; that it met St. Louis prices when it could do so without a loss; and that sometimes it met the competition and sold its products at cost in order to establish its goods in certain markets.

Damage for which reparation can be awarded in discrimination cases is not shown to have been sustained. *Penna R. R. Co. v. International Coal Co.*, 230 U. S., 184; *New Orleans Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 32; *Spiegle v. S. Ry. Co.*, 32 I. C. C., 687; *Coal Switching Reparation Cases at Chicago*, 36 I. C. C., 226. We accordingly find that complainant has not established its right to an award of reparation.

An order will be entered dismissing the supplemental complaint.

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No. 6492.

**BRUSH CREEK MINING & MANUFACTURING COMPANY
ET AL**

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted May 8, 1914. Decided May 23, 1916.

1. **Carload rates of the Cumberland Railroad and the Louisville & Nashville Railroad on coal from mines on the Cumberland Railroad to the northwest and the southeast found not to be discriminatory because they exceed group rates of the Louisville & Nashville Railroad to and from the same territories from and to mines on that road, but found to be unreasonable to the extent that they exceed such group rates by more than 5 cents per ton, and the defendants required to publish rates on that basis. Reparation denied.**
2. **Rates on inbound supplies to mines on the Cumberland Railroad not found to be unreasonable or discriminatory.**

Bullitt & Chalkley for complainants.

William A. Northcutt and Nelson W. Proctor for Louisville & Nashville Railroad Company.

Frank W. Gwathmey for Cumberland Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

The mines of complainants are located on the Cumberland Railroad, which has a physical connection with the Louisville & Nashville Railroad at Artemus, in the state of Kentucky, 20 miles southeast of Corbin, Ky., and 192 miles southeast of Louisville. The Southern Railway Company owns all the stock and bonds of the Cumberland Railroad Company. By their formal complaint, filed January 15, 1914, the complainants attack the rates on coal from their mines to points in Canada and in various states described in the complaint as northwestern territory, and to points in various other states described in the complaint as southeastern territory, the charge being that the rates complained of are unreasonable, and also unjustly discriminatory, as compared with rates to the same points of destination from various mines on the main line of the Louisville & Nashville Railroad south and southeast of Corbin, in the state of Kentucky, and on branches of that line extending up Greasy Creek, Big Bear Creek, and Straight Creek, and on the Wasioto & Black Mountain branch extending from Orby to Benham,

Ky. The complaint also attacks the rates on inbound shipments of supplies, but little evidence was introduced upon that branch of the complaint, and we will first consider the case as if it related only to the rates on coal.

The Louisville & Nashville Railroad Company, hereinafter referred to as the L. & N., operates a line of railroad in the state of Kentucky extending from Corbin to Louisville, a distance of 171 miles, and another line of railroad extending from Corbin to Cincinnati, in the state of Ohio, a distance of about 186 miles, and connecting at each of these points with various railroads extending into the territory described in the complaint as northwestern territory. The L. & N. also operates a line of railroad extending from Corbin southwardly through Knoxville to Atlanta, in the state of Georgia, a distance of 301 miles, and there connecting with various railroads extending into the territory described in the complaint as southeastern territory. All the mines on the L. & N. and its branches in a large territory south and southeast of Corbin in Kentucky and Tennessee are grouped together and each is given the same rate to each of the various points of destination named in the complaint, that rate being referred to in the record as the Pineville rate, although sometimes called the Middlesboro-Jellico rate. The rates from mines in the Appalachia and St. Charles districts in Virginia to northwestern territory are higher than from the mines in Kentucky and Tennessee, and no rates are published from those mines to southeastern destinations by way of the L. & N. through Corbin. From points east of Crosby, which is 47 miles southeast of Corbin on the Wasioto & Black Mountain branch, the rates to southeastern territory are from 10 cents to 20 cents a ton higher than the Pineville rates, but the rates from that territory to the northwestern territory are the same as the Pineville rates. The group which takes the Pineville rates to the northwestern territory and which will be referred to as group No. 1 is substantially larger than the group which takes the Pineville rates to southeastern territory, and which will be referred to as group No. 2, references to rates from group No. 1 relating to rates to northwestern territory and references to rates from group No. 2 relating to rates to southeastern territory. Prior to January 1, 1914, coal from mines on the Stony Fork branch was transported by the L. & N. to Middlesboro and thence by the Southern to southeastern territory, but since January 1, 1914, the Southern Railway, under trackage rights granted by the L. & N., has been operating over the Stony Fork branch, and all coal from mines on that branch is now moved by the Southern Railway Company to southeastern territory. The rates from those mines, which are from 44 to 53 miles south of Corbin, were, when the L. & N. operated that branch, and are now,

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the same as the Pineville rate. The coal from the various mines referred to other than those on the Stony Fork branch, whether destined to northwestern territory or to southeastern territory, moves to Corbin and is distributed from that point. The most distant mines which are referred to in the complaint as being unduly favored are the mines at Ages, which are 55 miles from Artemus. It was stated in argument, and not controverted, that the average distance from Louisville of the mines in group No. 1 is 211 miles as compared with the distance of 191 miles from Artemus to Louisville, and that the average distance from Atlanta of the mines in group No. 2 is 311 miles as compared with the distance of 321 miles from Artemus to Atlanta. The most distant mine on the Cumberland Railroad is 31 miles from Corbin, 202 miles from Louisville, and 332 miles from Atlanta. The four most distant mines on that road take rates to northwestern territory, which are in general $12\frac{1}{2}$ cents in excess of the rates from group No. 1, and rates to southeastern territory, which are $12\frac{1}{2}$ cents in excess of rates from group No. 2 to that territory, and the other mines on that road take rates which are in general 10 cents in excess of the rates from group No. 1 and group No. 2, respectively. The complainants insist that the rates applying from these groups ought to be extended to their mines.

Through rates are published from complainants' mines, but these through rates are equal to the sums of the separately established rates of the Cumberland and the L. & N.

It appears that the charge of 10 and $12\frac{1}{2}$ cents for the haul to Artemus from the two groups of complainants' mines, respectively, represents but little, if anything, more than the cost of the service, since the excess over operating expenses earned by the Cumberland Railroad, which is almost exclusively a coal road, is not sufficient to pay taxes and hire of equipment. The maximum which the L. & N. receives out of the rates to northwestern territory is 90 cents per ton and the minimum is 65 cents per ton. The rates are the same as the rates from the Kanawha field of the Chesapeake & Ohio Railroad except where those rates would not leave as much as 65 cents per ton for the L. & N. for its haul to Cincinnati or Louisville, and in that event the rates exceed the rates from the Kanawha field to the extent required to bring the revenue of the L. & N. up to 65 cents per ton. In many cases the L. & N. is compelled to accept its minimum of 65 cents per ton, and its estimate is that its average revenue from these rates does not materially exceed that minimum. The rate to Cincinnati is 90 cents per ton, out of which the L. & N. must absorb a switching charge. Out of the rate to the southeastern territory the L. & N. receives as its minimum on business going beyond Atlanta 90 cents for its haul to Atlanta, from Artemus, a distance of 321

miles, and receives as its minimum on business delivered to its connections at Cartersville 70 cents for its haul of 271 miles from Artemus. The maximum which the L. & N. receives out of these rates does not appear. It is not claimed that the existing rates are prohibitive, the fact being that in the year 1913 the coal moved from complainants' mines was 322,474 tons, of which 123,594 tons moved to points in Kentucky.

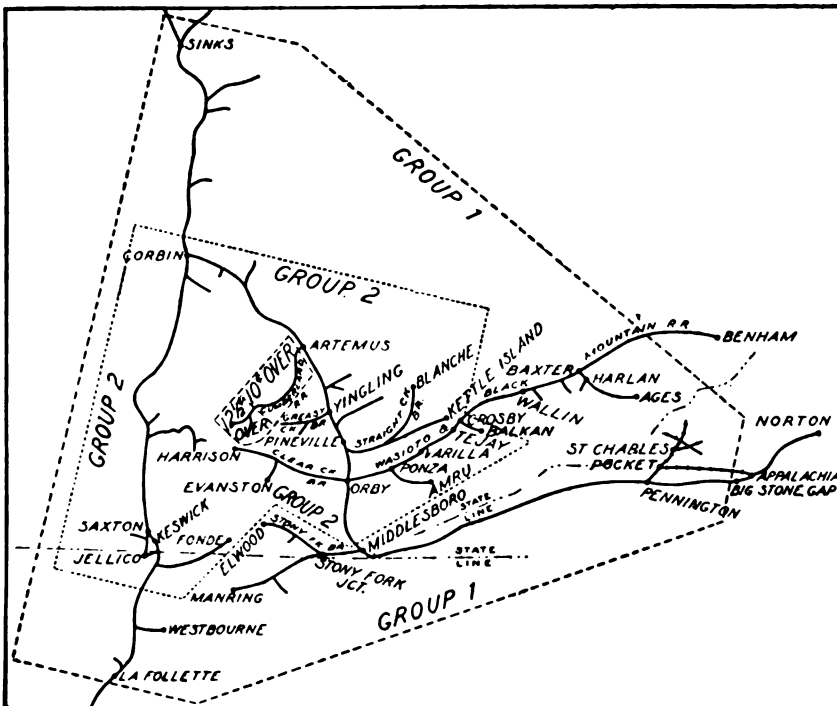
To become effective October 11, 1913, the L. & N. published a tariff reducing many of the rates complained of in amounts ranging from 7 to 25 cents per ton, and prescribing from the St. Charles mines differentials over the Pineville rate varying in amount, but that tariff was suspended by order of the Commission until the propriety of the changes made therein could be investigated, and since the hearing in this case that matter has been disposed of by our report and order in *Coal Rates from Virginia Mines*, 30 I. C. C., 635. By our order in that case we required the respondents to cancel the suspended rates from the St. Charles mines to the extent they exceeded certain differentials fixed in the report. It is clear that if complainants' mines should be given the Pineville rates the L. & N. would have to pay a large part, if not all, of the cost of bringing the coal from those mines to its line. It is not claimed that the L. & N. absorbs the cost of bringing coal to its line from other mines which are not on its line, but the contention is that as that company performs a service in bringing coal as far as Artemus on its journey to destination from the most distant points in groups No. 1 and No. 2, which service, it is claimed, costs that carrier more than the cost of moving coal from complainants' mines to Artemus, it discriminates against complainants in refusing to absorb the cost of moving coal from complainants' mines to Artemus.

We do not think that the law imposes upon a railroad the duty in all cases to give to mines on a connecting independent railroad the same rates to market that it gives to mines on its own branch lines in the same region, and the mere fact that the L. & N. refuses to extend to complainants' mines on the Cumberland Railroad its Pineville rate applying from mines on its own branch lines does not give to the mines on the branch lines of the L. & N. an undue preference, or subject complainants' mines to undue prejudice.

The complainants, however, charge that the rates from their mines are unreasonable as compared with the rates from mines on the branch lines of the L. & N., and that presents a different question.

The Pineville rate to northwestern territory applies to a group of mines widely scattered, extending from Corbin on the west to Benham on the east, a distance of 93 miles. On traffic destined to the southeast the Pineville rate applies from Corbin on the west to

Crosby on the east, a distance of 47 miles. As heretofore stated, the most distant of the mines alleged to be unduly favored are the mines at Ages, which are 75 miles east of Corbin. Ages is east of Crosby and takes Pineville rates to the northwestern territory and 10 cents a ton higher than the Pineville rates to southeastern territory. The rates from Ages to southeastern territory are therefore the same as the rates from some of the mines on the Cumberland Railroad and $2\frac{1}{2}$ cents less than the rates from others. The complainants have not placed in the record for comparison with the rate from their mines any other rates than those from the mines in group No. 1 and group



No. 2. In comparing group rates with other rates the average distance from the various points in the group to the points of destination in question must be considered, and not the distances from the points on the borders of the group. The average distance from points in group No. 1 to Louisville is 211 miles as compared with 202 miles from the most distant of complainants' mines.

The average distance of mines in group No. 2 to Atlanta, the gateway to the southeastern territory, is 311 miles as compared with the distance of 332 miles from the most distant of complainants' mines to Atlanta. While the distance from complainants' mines to
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southeastern territory exceeds the average distance from the mines in group No. 2 to the same territory, that variation from the average is slight and is offset by the fact that the distance from complainants' mines to northwestern territory is slightly less than the average distance from mines in group No. 1 to the same territory. Distance alone considered, therefore, complainants' mines seem to be entitled to the same rates as mines in group No. 1 and group No. 2. It also appears that the operating conditions on the Cumberland Railroad are quite as favorable as the operating conditions on the branch lines of the L. & N., and even more favorable than the operating conditions on some of those branch lines. Some consideration, however, must be given to the fact that we have here a two-line haul as compared with a one-line haul from points on L. & N. branches, and while the actual transportation service may be substantially the same from points on the Cumberland Railroad as from points on the branch lines of the L. & N., the necessary additional cost of separate organization and separate billing must be taken into account, thus warranting a slightly higher charge in the case of the two-line haul. Ages is 55 miles east of Artemus, and the cost of bringing coal from that point to Artemus must be at least 2 mills per ton-mile, as we found in *Louisville & Nashville R. R. Coal and Coke Rates*, 26 I. C. C., 20, the cost of moving coal from mines on the Cumberland Valley division of the L. & N. to Louisville to be 2.56 mills per ton-mile, the L. & N. there claiming the cost to be greater than that amount. If we assume the cost of moving coal from Ages to Artemus on its through journey to be only 2 mills per ton-mile the L. & N. renders for the mines at Ages a service which costs it 11 cents per ton more than the service it renders to complainants in moving their coal from Artemus, and for which it charges complainants the same rate when destined to northwestern territory that it charges the mines at Ages for the much more expensive service. We do not refer to this as showing discrimination in favor of the mines at Ages, but as throwing some light upon the question as to the extent to which the L. & N. might, without injustice, be required to shrink its rates from Artemus to make the joint through rates from complainants' mines.

Upon all the facts appearing of record we conclude that the joint rates from mines on the Cumberland Railroad to what is described in the record as northwestern territory and southeastern territory ought not in any case to exceed the group rates by more than 5 cents per ton, and an order will be entered requiring defendants to publish rates from complainants' mines to the territories referred to not exceeding the group rates applying from the L. & N.'s branch lines by more than 5 cents.

The evidence as to inbound rates is so meager that we can not say that those rates are either unreasonable or unduly prejudicial to complainants. Upon all the facts in the record we do not think that reparation ought to be awarded.

DANIELS, *Commissioner*, dissenting:

From the conclusions of the majority of the Commission I am forced to dissent, and for the following reasons:

Coal on the Cumberland Railroad is carried to Artemus, the junction point with the Louisville & Nashville, at cost or even below. This fact is evidenced by the majority report that—

It appears that the charge of 10 and 12½ cents for the haul to Artemus * * * represents but little, if anything, more than the cost of service, etc.

To shrink the through rate will therefore impose of necessity the entire loss of revenue upon the Louisville & Nashville.

The average revenue per ton-mile now received by the Louisville & Nashville from mines on its own rails in said group is barely remunerative and so low as not to be impeachable on the score of unreasonableness. Since the Commission has not seen fit to disturb the maintenance of the groups and the uniform group rates, irrespective of the actual hauls from various mines therein, it is estopped from holding that, because the Louisville & Nashville is saved some miles in the haul northbound on its own rails within the group on the coal from the Cumberland mines, the Louisville & Nashville should make an abatement from the present through charge by reason of the slightly shorter distance the Cumberland coal on the average is carried. Moreover, if this saving in haul northbound warrants an abatement in charge from mines on the Cumberland Railroad, the fact that the most distant of the complainants' mines is 332 miles from Atlanta while the average distance from mines in group 2 to Atlanta is 311 miles would warrant a charge from complainants' mines higher by more than 5 cents over the group rate to Atlanta.

The consistent application of the present holding would be to disintegrate the group and to graduate charges according to the distance of the respective hauls therein. It is not unlawful for a carrier to make a reasonable grouping of mines on its own rails and to blanket the rates thereon. *A fortiori*, it is not unlawful or unreasonable in the instant case for the Louisville & Nashville to obtain as its division of the rate on coal originating on connecting lines an amount no greater than it obtains for hauls within the group on coal from mines on its own rails.

COMMISSIONER HARLAN authorizes me to state that he concurs in this view.

No. 5826.

SNOW LUMBER COMPANY

v.

RALEIGH, CHARLOTTE & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted January 18, 1916. Decided May 19, 1916.

On rehearing, rates on lumber in carloads from Norman, N. C., to points north and east of Virginia cities found unduly prejudicial as compared with the rates from Carthage, N. C., and other points in the same vicinity. Reparation denied.

Peacock & Dalton for complainant.

Thomas C. Guthrie for Raleigh, Charlotte & Southern Railway Company and Norfolk Southern Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

Our original report herein appears in 33 I. C. C., 587. The complaint, which was filed May 31, 1913, attacked the commodity rates charged by defendants for the transportation of lumber in carloads from Norman, N. C.; to points in Virginia, West Virginia, the District of Columbia, and various named states north thereof as unreasonable and unduly prejudicial, to the advantage of Troy, Wadeville, and Mount Gilead, N. C., from which points the rates were and are 1 cent per 100 pounds lower than from Norman. Reparation was asked. We found that the rates assailed had not been shown to be unreasonable and that the circumstances and conditions of the traffic and transportation from Norman, a branch-line point, were sufficiently unlike those from the alleged favored main-line points to justify the difference of 1 cent per 100 pounds in the rates. The case was reopened at complainant's request and an amendment to the original complaint was filed alleging that the rates assailed are unduly preferential of main-line and other branch-line points in the vicinity of Norman and of the traffic in other commodities, including intrastate traffic. Rehearing was had, and the case is now before us on the whole record.

In the original report we said:

Troy, Wadeville, and Mound Gilead are on the main line of the Raleigh, Charlotte & Southern Railway, through Raleigh and Star, N. C., to Charlotte, N. C. A branch line extending from Asheboro, N. C., 56 miles southeast to Aberdeen, N. C., inter-

sects the main line at Star. Biscoe and Candor are the first two stations on this branch south of Star. Ellerbe is the terminus of a minor branch which extends south from Candor. Norman is on this branch, 9 miles south of Candor and 9 miles north of Ellerbe. Candor is 8 miles south of Star, which is 23 miles southeast of Asheboro and 33 miles northwest of Aberdeen. Troy is 8 miles west of Star, Wadeville 16 miles, and Mount Gilead 22 miles, while Star is 83 miles west of Raleigh and 73 miles east of Charlotte.

Pinehurst and West End, N. C., are between Aberdeen and Candor, 6 miles and 13 miles, respectively, north of Aberdeen. A minor branch of the Raleigh, Charlotte & Southern extends 13 miles north from Pinehurst to Carthage, N. C. From West End another minor branch extends 4 miles west to Jackson Springs, N. C. The Raleigh, Charlotte & Southern is now controlled by the Norfolk Southern Railroad.

The rates in question are joint rates composed of the local rates to Norfolk and proportionals beyond, and, as the components beyond Norfolk are the same irrespective of the point of origin, only the components to Norfolk need be considered.

The local rate from Norman is 13 cents, whereas a rate of 12 cents applies from all points on the Asheboro-Aberdeen, Jackson Springs, and Carthage branches, except Asheboro and Aberdeen, from which a rate of 10.5 cents applies. This adjustment has obtained since the opening of the Ellerbe branch in January, 1911. A 12-cent rate also applies from points in the vicinity of Norman on other railroads. Complainant competes actively with dealers located at Jackson Springs and other branch-line points in the vicinity of Norman and is at a rate disadvantage of from \$4 to \$5 per car on interstate shipments. On all commodities except lumber the rates to Norfolk from Norman are the same as the rates from points on the branch lines above named. The class P rate, applicable to lumber in the Carolinas in the absence of a special rate, is 12½ cents from Norman to Norfolk, and applies on lumber in the opposite direction.

A considerable part of the testimony taken on rehearing was directed to the circumstances and conditions of the traffic and transportation from Norman in comparison with those from other branch-line points, especially Jackson Springs and Carthage. It was shown that the Ellerbe branch traverses a level region which is more productive and more thickly populated than the hilly regions traversed by the Jackson Springs and Carthage branches and that the traffic density is much greater. The Ellerbe branch was constructed at considerably less cost per mile than any of the branch lines described. Defendants insist that the Jackson Springs line is not operated as a separate branch, inasmuch as trains running between Asheboro and Aberdeen are backed in and out to and from Jackson Springs. They assert that the 12-cent rate on lumber from Car-

thage to Norfolk was established and is maintained to meet the rate of 12 cents applicable between these points over the Randolph & Cumberland Railroad and the Seaboard Air Line Railway.

The Ellerbe branch was constructed for the special purpose of moving lumber produced by complainant in the territory served by that branch. It is now shown that the Jackson Springs and Carthage branches were also built primarily for the purpose of reaching timberlands. In consideration of the construction of this branch complainant agreed to the establishment of rates on lumber from all points thereon 1 cent per 100 pounds higher than the rates from Candor. The differential has been abolished for intrastate hauls, and complainant cites this fact in support of its allegation that the rates assailed are unduly preferential of intrastate traffic. Defendants assert that they were forced by the state of North Carolina to abolish the differential on intrastate shipments.

Circumstances and conditions of the traffic and transportation considered, it appears that the 13-cent rate to Norfolk from Norman is not in line with rates from other branch-line points in the same general vicinity. The fact that the rates from Norman to Norfolk on all commodities except lumber are the same as the rates from other points on the Asheboro-Aberdeen, Carthage, and Jackson Springs branches indicates that the carriers have recognized a similarity of transportation conditions.

Upon consideration of the whole record we find that the rates on lumber in carloads from Norman to points in Virginia, West Virginia, Maryland, Ohio, Pennsylvania, Delaware, New Jersey, New York, Connecticut, Massachusetts, and the District of Columbia have been, are, and for the future will be unduly prejudicial to the extent that they exceeded and may exceed the rates contemporaneously in effect on like traffic from stations on the Raleigh, Charlotte & Southern Railway, Seagrove to Ether, N. C., inclusive, Biscoe to Pinehurst, inclusive, Pinehurst to Carthage, inclusive, or Jackson Springs. We find that the allegation of unreasonableness has not been sustained. There is no proof of damage to complainant, on account of the undue prejudice, upon which to base an award of reparation.

An appropriate order will be entered.

No. 6930.¹

HESSIG-ELLIS DRUG COMPANY ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 1547
1548, 1779, 1952, 2043, 2045, 2523, AND 3965.

Submitted December 12, 1914. Decided May 19, 1916.

1. Rates from various points of origin on whisky and beer to Memphis, Tenn., and on bottled whisky to Helena, Ark., not found unreasonable or unjustly discriminatory, except to the extent that joint rates on whisky in wood from New York, N. Y., and Baltimore, Md., to Memphis, Tenn., exceeded the aggregates of intermediate rates contemporaneously in effect. Reparation awarded where joint rates exceeded the aggregates of intermediate rates.
2. Fourth section applications for authority to charge lower rates on beer and whisky from New York, N. Y., and Baltimore, Md., to Helena, Ark., than to Memphis, Tenn., denied.

G. M. Stephen and *S. J. Bolton* for complainants.

R. Walton Moore, *M. P. Callaway*, and *C. D. Drayton* for Illinois Central Railroad Company; Yazoo & Mississippi Valley Railroad Company; Southern Railway Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Norfolk & Western Railway Company; Old Dominion Steamship Company; and Nashville, Chattanooga & St. Louis Railway.

William Burger for Louisville & Nashville Railroad Company.

T. H. Fee for Western Maryland Railway Company.

J. C. Murray for Missouri & North Arkansas Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These cases were heard together and will be decided in one report.

The complaint in No. 6930 was filed May 15, 1914, by Hessig-Ellis Drug Company, Van Fleet-Mansfield Drug Company, Ellis-Lillibek Drug Company, corporations, and B. J. Semmes & Company, a copartnership composed of J. M. Semmes and R. E. Semmes, engaged

¹ The proceeding also embraces complaints in—No. 6932, B. J. Semmes & Company et al. v. Louisville & Nashville Railroad Company et al.; and No. 7006, I. Ehrman v. Yazoo & Mississippi Valley Railroad Company et al.

in the drug and liquor business at Memphis, Tenn. The allegations are that defendants' rates for the transportation of bottled whisky in less than carloads from points in Kentucky, Ohio, Illinois, and Missouri to Memphis, and on whisky, in wood, in less than carloads, from Tyrone, Ky., to Memphis, are unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul rule of the fourth section in that they exceed the rates contemporaneously in effect to New Orleans, La., to which point Memphis is intermediate from the points of origin involved. Reparation is asked.

WHISKY IN GLASS.

The southern classification governs the whisky traffic both to Memphis and New Orleans from all of the points involved. Whisky in glass, any quantity, is rated second class; whisky, in bulk, in wood, any quantity, class H. Most of the rates on whisky, in glass, from the points of origin involved to Memphis are on the class basis, while the rates to New Orleans are commodity rates. The following table gives the points of origin involved, the rates in effect on whisky in glass to Memphis and New Orleans, and the rates alleged to be reasonable to Memphis; rates stated in cents per 100 pounds:

From—	To Mem- phis.	To New Orleans.	Proposed rates to Memphis.
St. Louis, Mo.....	50	49	39
Owensboro, Ky.....	47	47	32
Louisville, Ky.....	50	49	34
Frankfort, Ky.....	60	53	39
Carrollton, Ky.....	60	53	39
Taylorton, Ky.....	67	60	39
Cincinnati, Ohio.....	60	53	39
Lynchburg, Ohio.....	60	53	39
Peoria, Ill.....	61	54	39
Pekin, Ill.....	61	54	39
Chicago, Ill.....	65	56	46

Class and commodity rates to Memphis and New Orleans from the points of origin involved bear a definite and fixed relation to the rate from St. Louis. The rate on whisky in glass from Louisville, for example, is the same as the rate from St. Louis, and the rates from other points of origin are made certain differentials over or under the rate from St. Louis and Louisville. The rate from Louisville on whisky in glass is fairly illustrative of all of the rates involved on that commodity.

The average distance from the points of origin involved to Memphis is much less than the average distance from the same points to New Orleans, and the class rates from these points to Memphis are much lower than the class rates to New Orleans. Defendants also apply lower rates on whisky in wood from the same points to Memphis than

to New Orleans. The second-class rates, for example, from Louisville are 50 cents per 100 pounds to Memphis and 75 cents to New Orleans, while the commodity rates from Louisville on whisky in wood are 25 cents to Memphis and 40 cents to New Orleans. The rate on whisky in glass from Louisville to New Orleans is only 9 cents per 100 pounds higher than the rate on whisky in wood. Complainants contend that the same relationship should obtain for whisky in glass and whisky in wood at Memphis.

Complainants assert that commodity rates to Memphis generally are lower than the commodity rates from the same points to New Orleans, but the statement submitted in support of the assertion exhibits as many commodity rates to New Orleans lower than to Memphis as it does commodity rates to New Orleans higher than to Memphis.

Defendants contend that entirely different conditions obtain at Memphis than at New Orleans as follows:

The Illinois Central Railroad found in 1910 that the distilleries which it served in the middle west were not able to supply their fair share of the whisky consumed in the south, and principally because of the situation at New Orleans. Large manufacturers of whisky were located in New Orleans who distributed their products throughout the south to the disadvantage of western distillers. Large eastern distillers also were shipping whisky to New Orleans by water and absorbing the trade of the western distillers. New Orleans was not only the largest city in the south, but, because under the state-wide prohibition laws in Georgia, Alabama, Mississippi, and Tennessee whisky consumed in those states could be distributed only from points in other states, had also become a whisky distributing point of great importance. The all-water rate on whisky in carloads from New York to New Orleans via the Morgan line was 50 cents per 100 pounds, which rate was not filed with the Commission. But rates were published and filed by the Morgan line from interior eastern points with provision for the absorption of the rail rates to the ports, which meant a net rate from New York, Philadelphia, and Baltimore to New Orleans of only 50 cents. The Philadelphia & Gulf Steamship Company operates from Philadelphia to New Orleans, and to compete with the Morgan line met the Morgan line's rates to New Orleans. In order to enable distillers at Peoria to compete in the New Orleans market and to distribute their products from that point the Illinois Central Railroad published a rate of 54 cents on whisky in glass from Peoria to New Orleans, and because of the relationship uniformly maintained between rates from the points of origin involved new rates were published from St. Louis, Louisville, Cincinnati, and other points based on the 54-cent rate from Peoria. The rates to

New Orleans resulted. These rates originally were published to apply on carload lots only. But other carriers adopted an any-quantity basis, and the Illinois Central subsequently adopted the same basis. The present shipments of whisky from eastern points to New Orleans over all water routes average seven carloads per month. There are no distilleries at Memphis, and the all-water lines from the east maintain much higher rates to Memphis than to New Orleans.

Defendants assert that whisky in glass moves at class rates to all points in the territory south of the Ohio River and east of the Mississippi River, except to New Orleans and Mobile, Ala., and neighboring points which take rates made by combinations on New Orleans or Mobile, and that the rates from the Ohio River crossings and beyond to Memphis are on a lower basis than to any point in the south except New Orleans. The following statement submitted by defendants compares the rates on whisky in glass to Memphis from Louisville, which is said to be the most important whisky shipping point in the south, with the rates to other points; rates stated in cents per 100 pounds:

To—	From Louisville, Ky.		To—	From Louisville, Ky.	
	Miles.	Rate.		Miles.	Rate.
Memphis, Tenn.....	377	50	Aberdeen, Miss.....	450	94
Helena, Ark.....	443	75	Atlanta, Ga.....	451	87
Decatur, Ala.....	306	69	Winona, Miss.....	476	94
Chattanooga, Tenn.....	311	60	Little Rock, Ark.....	510	120
Jackson, Tenn.....	306	74	Kansas City, Mo.....	552	161
Dyersburg, Tenn.....	317	69	Camden, Ark.....	585	189
Huntsville, Ala.....	318	69	Topeka, Kans.....	619	121
Jefferson City, Mo.....	391	86	Omaha, Nebr.....	679	168
Birmingham, Ala.....	394	69	Oklahoma City, Okla.....	864	171

WHISKY IN WOOD.

The rates involved on whisky in wood from Tyrone are 35 cents per 100 pounds to Memphis and 50 cents to New Orleans. Complainant desires a rate of 30 cents to Memphis. The rate to Memphis is composed of a rate of 40 cents per barrel, of estimated weight of 400 pounds, to Louisville, and a rate of 25 cents per 100 pounds beyond. The rate of 30 cents per 100 pounds applies on whisky in wood from Cincinnati to Memphis, which is also applied from Shelbyville and Versailles, Ky., to Memphis. Versailles is only 8 miles west of Tyrone and complainants contend that Tyrone also should be accorded the Cincinnati rate.

Tyrone is a local station on the Lexington branch of the Southern Railway, 66 miles east of Louisville. There are eight distillery points on the line of the Southern Railway in Kentucky, including Tyrone, and the movement of whisky from these points to the south

is entirely in less-than-carload quantities. The shipments made are concentrated at Louisville, and when destined to Memphis are forwarded from Louisville, by package car service, over the Southern Railway in Kentucky to Danville, Ky., thence over the Cincinnati, New Orleans & Texas Pacific Railway to Chattanooga, Tenn., and thence over the Southern Railway to Memphis, a total distance of 691 miles. Memphis is only 568 miles from Tyrone by the direct route over the Southern Railway, but defendants state that the direct route would entail numerous transfers and that no through service is maintained by the Southern which could be utilized, other than the through service described through Louisville.

There are no distilleries at either Versailles or Shelbyville and no whisky is shipped from either point. The Louisville & Nashville also serves both points. Memphis is 410 miles from Shelbyville over the Louisville & Nashville; Versailles, 451 miles. The Southern maintains the same class rates from both points to Memphis as the Louisville & Nashville. The class H rate from Tyrone to Louisville, which applies on whisky in wood in the absence of commodity rates, is 15 cents per 100 pounds. The 35-cent rate from Tyrone to Memphis compares favorably with the rates from Tyrone to other points in the south for the same and even for shorter distances. Such rates are: To Knoxville, Tenn., 227 miles, 39 cents; to Chattanooga, Tenn., 255 miles, 39 cents; to Birmingham, Ala., 398 miles, 43 cents. The rates from Cincinnati, Ohio, to Memphis, moreover, are said to have been compelled by water competition on the Ohio and Mississippi rivers, which does not obtain from Tyrone and other interior distilling points on the Southern Railway in Kentucky. Memphis is 490 miles from Cincinnati by the short line, 201 miles less than the distance from Tyrone by the usual route of movement.

We find that the rates assailed on both whisky in glass and in wood are not shown to be either unreasonable or unjustly discriminatory, and the complaint will be dismissed.

The maintenance of lower rates from the points of origin involved to New Orleans than to Memphis is protected by appropriate fourth section applications which have not been heard, and the findings herein announced are without prejudice to future action on such applications.

DOCKET NO. 6932.

The complaint in No. 6932 was filed May 20, 1914, by B. J. Semmes & Company and Hessig-Ellis Drug Company. The allegations are that the rates to Memphis on whisky in wood and in glass in less than carloads from New York, N. Y., and Baltimore, Md., and on bottled beer in less than carloads from New York, are unreasonable and unjustly discriminatory; also that the rates assailed exceed the ra

contemporaneously in effect to Helena, Ark., Capleville, Tenn., and Olive Branch, Miss., and the aggregate of intermediate rates to and from National Cemetery and Springdale, Tenn., in violation of the rules of the fourth section. Reparation is asked. Applications by defendants for authority to continue rates on whisky and beer from New York and Baltimore to Helena, Ark., lower than the rates contemporaneously applicable on like traffic to Memphis and other intermediate points, and to continue through rates on whisky and beer from New York and on whisky from Baltimore to Memphis higher than the aggregates of intermediate rates to and from National Cemetery were heard with the complaint. The allegations of the complaint relative to the rates on whisky in glass from Baltimore and New York were withdrawn at the hearing.

Traffic from New York and Baltimore to Memphis is governed by the official classification; traffic to Helena, Capleville, and Olive Branch by the southern classification. The official classification rates whisky in bulk, in wood, in less than carloads, rule 25, while the southern classification rates whisky in bulk, in wood, any quantity, class H. Whisky in glass in less than carloads is rated first class in the official classification; whisky, in glass, any quantity, second class in the southern classification. Beer in less than carloads is rated third class in the official classification, fourth class in the southern classification.

The rates applicable on whisky in wood and on beer in bottles from New York and Baltimore to Memphis, Helena, Capleville, and Olive Branch, which are class rates, are as follows; rates stated in cents per 100 pounds:

To—	From New York, N. Y.		From Baltimore, Md.	
	Whisky in wood.	Beer in bottles.	Whisky in wood.	Beer in bottles.
Memphis, Tenn.	72	65	65	62
Helena, Ark.	61	61	58	56
Capleville, Tenn.	55	58	52	55
Olive Branch, Miss.	61	60	58	57

Capleville and Olive Branch are located on the St. Louis & San Francisco Railroad, 13 and 18 miles, respectively, east of Memphis, and traffic moving to either point from the points of origin involved over the Louisville & Nashville passes through Memphis. The class rates to Capleville, Olive Branch, National Cemetery, and Springdale ordinarily are constructed by the addition of the rates from Memphis to destinations, governed by the southern classification, to the rates

from New York and Baltimore to Memphis, governed by the official classification. Several of the shipments on which reparation is asked moved through National Cemetery and Springdale. Both points are on the Louisville & Nashville just east of Memphis and intermediate to Memphis. The joint through rates applicable to Memphis from New York and Baltimore exceeded the aggregates of the intermediate rates to and from National Cemetery and Springdale. The joint rates on whisky in wood, for example, were 72 cents per 100 pounds from New York and 65 cents from Baltimore. A rate of 51 cents applied from New York to National Cemetery and Springdale, a rate of 48 cents from Baltimore. The local rate from National Cemetery and Springdale to Memphis was 6 cents. The aggregates of intermediate rates, therefore, were only 57 cents from New York and 54 cents from Baltimore. The discrepancy no longer exists, as effective October 18, 1914, the rate from National Cemetery and Springdale to Memphis was increased sufficiently to remove it, and Fourth Section Application No. 1547, covering this feature, need not be further considered.

Complainants contend that the rates on whisky in wood to Memphis should not exceed 54 cents per 100 pounds from New York and 47 cents from Baltimore and that the rates on beer in bottles from New York should not exceed 50 cents. These rates are lower than the rates applicable to Capleville and Olive Branch, and also than the aggregates of the rates applicable to and from National Cemetery and Springdale.

Complainants state that generally the rates from New York and Baltimore to Memphis are lower than the rates to Helena, and that although the class rates to Memphis from Virginia and North Carolina points are higher than from Baltimore, the rate on whisky in wood from Virginia-North Carolina points is 25 cents per 100 pounds lower than from Baltimore. Also that the rates on the first three classes from Baltimore to Memphis are slightly higher than from Pittsburgh, while the rate on whisky in wood from Baltimore is 32 cents per 100 pounds higher than the rate from Pittsburgh to Memphis, and that the rates on iron and steel articles from Pittsburgh to Memphis apply from Cumberland, Md., to Memphis. Since Cumberland ordinarily takes the same rates to Memphis as Baltimore, complainants urge that the rate on whisky from Pittsburgh to Memphis should apply from Baltimore. The rate on whisky in wood from Baltimore to Memphis also is shown to exceed the combination rates based on Pittsburgh or Wheeling, W. Va., 27 cents to both points and 33 cents beyond. But none of the shipments on which reparation is asked moved by way of Pittsburgh or Wheeling. Although the class

rates from Baltimore to Memphis generally are lower than to certain other points in Tennessee and Mississippi, the rates on whisky in wood from Baltimore to Memphis are higher than from Baltimore to these points, as is illustrated by the following table:

To—	1	2	3	4	5	6	Whisky.
Memphis, Tenn.....	\$0.92	\$0.77	\$0.62	\$0.42	\$0.35	\$0.29	\$0.65
Chattanooga, Tenn.....	.98	.87	.78	.63	.52	.41	.87
Holly Springs, Miss.....	1.27	1.09	.88	.65	.55	.47	.67
Jackson, Tenn.....	1.17	1.01	.85	.64	.51	.46	.49
Union City, Tenn.....	1.10	.94	.78	.57	.49	.42	.54

Defendants ascribe their higher rates on whisky to Memphis than to other destinations in southern territory to the subjection of the rates to Memphis to the official classification, the official classification ratings being higher than the southern classification ratings. The rates on traffic from the east to Memphis are said to have been compelled by competition with all-water lines to Memphis operating from the east by way of New Orleans which maintained rates governed by official classification, and by the desirability of maintaining Memphis and the upper Mississippi River crossings, to which the official classification applied on traffic from the east to points west of the Mississippi River, on a parity. Defendants state that the application of the official classification has given to Memphis a lower basis of rates on traffic generally than it would have received under the normally applicable southern classification. The application of the southern classification on traffic to Helena is attributed to less intense competition between the rail and the all-water carriers.

The following table compiled from an exhibit filed by defendants compares the rates on the first six classes of traffic from New York to Memphis, governed by the official classification, with the class rates to other important points in the south governed by the southern classification; rates stated in cents per 100 pounds:

To—	Miles.	From New York.					
		1	2	3	4	5	6
Memphis, Tenn.....	1,156	100	85	65	45	38	32
Helena, Ark.....	1,222	118	98	78	61	50	44
Chattanooga, Tenn.....	846	105	90	80	68	56	44
Atlanta, Ga.....	874	117	103	92	76	62	49
New Orleans, La.....	1,336	118	98	78	61	50	44

Defendants also submit the following comparisons of rates on whisky and beer from New York; rates stated in cents per 100 pounds:

To—	Miles.	From New York, N. Y.		
		Whisky in wood, L. C. L.	Whisky in glass, L. C. L.	Beer in bottles, L. C. L.
Louisville, Ky.	865	55	75	50
Paducah, Ky.	1,090	66	90	60
Cairo, Ill.	1,097	66	90	60
St. Louis, Mo.	1,054	65	88	59
Memphis, Tenn.	1,156	72	100	65
Helena, Ark.	1,222	61	98	61
Capleville, Tenn.	1,169	55	103	53
Olive Branch, Miss.	1,174	61	105	60
Chattanooga, Tenn.	846	60	93	68
Birmingham, Ala.	988	76	108	81
Atlanta, Ga.	874	68	103	76
Montgomery, Ala.	1,049	76	105	77
Vicksburg, Miss.	1,251	61	98	61
Jackson, Miss.	1,238	85	109	83
Jackson, Tenn.	1,171	52	109	67
New Orleans, La.	1,336	83	118	78

We find that the rates assailed are not shown to be either unreasonable or unjustly discriminatory, except the rates charged on the shipments involved that moved through National Cemetery and Springdale.

The shipments that moved through National Cemetery were made, some by the Hessig-Ellis Drug Company, on August 23, 1912, from Baltimore; some by B. J. Semmes & Company from Baltimore, between October 25, 1911, and May 26, 1913; and some by B. J. Semmes & Company from New York, on April 10, 1913. All of the shipments consisted of whisky in wood in less-than-carload lots and aggregated 61,025 pounds. The claims based on the shipments made by B. J. Semmes & Company were presented to the Commission informally September 15, 1913. Charges were collected on all of the shipments at rates of 65 cents per 100 pounds from Baltimore and 72 cents per 100 pounds from New York. We find that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at the aggregates of the intermediate rates to and from National Cemetery or Springdale.

Defendants attribute the fourth section departures involved in the rates to Helena, Capleville, and Olive Branch exclusively to the different ratings provided for the traffic involved in the official and the southern classifications. Hundreds of similar departures are said to exist in the rates to border points between different classification territories, for which the only practical remedy is a uniform classification. Practically the same contention was made and rejected in *Chamber of Com., Washington, D. C., v. B. & O. R. R. Co.*, 30 I. C. C., 446.

We find that defendants have not justified charging lower rates to Helena than to Memphis, and defendants' fourth section applications, 89 I. C. C.

which seek authority to continue rates on whisky and bear from New York and whisky from Baltimore, to Helena lower than the rates contemporaneously applicable to Memphis, are denied. The charging of lower rates from the points of origin involved to Olive Branch and Capleville than to Memphis is protected by appropriate fourth section applications which have not been heard, and the findings herein announced are without prejudice to future action upon such applications.

We further find that the Hessig-Ellis Drug Company and B. J. Semmes & Company made the less-than-carload shipments of whisky in wood involved from New York and Baltimore by way of National Cemetery or Springdale to Memphis, as described, and paid and bore charges thereon at the rates herein found unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the aggregates of the intermediate rates to and from National Cemetery or Springdale; and that complainants are entitled to reparation with interest. The exact amount of reparation due can not be determined on the present record, and complainants accordingly should prepare a statement showing as to each shipment on which reparation is claimed, the date of movement, points of origin and destination, weight, route, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainants and verified by defendants we will consider further issuing an order awarding reparation.

DOCKET NO. 7095.

The complaint in No. 7095, filed July 7, 1914, by I. Ehrman, alleges that defendants' rates for the transportation of whisky in glass, less than carloads, from points in Pennsylvania, Ohio, Indiana, Kentucky, and Tennessee to Helena are unreasonable and unjustly discriminatory. Reparation is asked.

The following table shows the points of origin and destination involved, the present rates and rates alleged to be reasonable and non-discriminatory: rates stated in cents per 100 pounds:

Rates on whisky in glass, less than carloads, to Helena, Ark.

From—	Present rates.	Proposed rates.	From—	Present rates.	Proposed rates.
Pittsburgh, Pa.....	65	59	Louisville, Ky.....	75	62
Lynchburg, Ohio.....	83	53	Carrollton, Ky.....	83	63
Terre Haute, Ind.....	81	53	Nashville, Tenn.....	83	63
Aurora, Ind.....	83	53			

The only evidence adduced against the rates assailed is a general statement to the effect that the rates proposed are the same as the rates in effect to New Orleans, and that in *Helena Freight Bureau v. M. P. Ry. Co.*, Docket No. 5659, unreported, we stated that the rates to Helena generally are the same as the rates to New Orleans. Traffic from the points of origin involved to New Orleans does not move through Helena.

Complainant alleges that it was charged \$1.17 per 100 pounds from Pittsburgh, 77 cents per 100 pounds from Nashville, and \$1 per 100 pounds from Carrollton, but the allegations are not supported by evidence, and we are therefore unable to determine whether complainant was overcharged; if he was, defendants should make refund promptly. This complaint will be dismissed.

Orders will be entered in accordance with the conclusions herein announced.

89 I. C. C.

No. 7645.
STEARNS & CULVER LUMBER COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

Submitted July 3, 1915. Decided April 28, 1916.

Charges collected on shipments of various commodities from points north of the Ohio River to Milton, Fla., found unlawful to the extent that they exceeded the aggregate of the rates to and from Pensacola, Fla. Reparation awarded.

J. S. Bolton for complainant.

A. P. Humburg for Illinois Central Railroad Company.

W. Burger for Louisville & Nashville Railroad Company.

F. W. Flott for Michigan Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, Stearns & Culver Lumber Company, was a corporation engaged in the lumber business at Milton, Fla. The Bagdad Land & Lumber Company is a corporation engaged in the same business with an office at the same place, and is the successor in interest to the Stearns & Culver Lumber Company, and the sole owner of its assets. By complaint, filed January 7, 1915, in the name of the Stearns & Culver Lumber Company for the account and use of the Bagdad Land & Lumber Company it is alleged that the charges collected by defendants for the transportation of 14 carload and less-than-carload shipments of various commodities during the period from July 10, 1906, to December 28, 1907, from various points north of the Ohio River to Milton were unreasonable and unjustly discriminatory, in violation of sections 1, 2, 3, and 4 of the act. Reparation is asked. The claims were presented to the Commission informally September 4, 1908.

The claim based on one shipment from Beloit, Wis., on July 10, 1906, was not presented until more than two years after the cause of action accrued, and is barred by the statute of limitations. The claims based on shipments from Cleveland, Ohio, on August 22, 1907, from Montpelier, Ind., on July 2, 1907, and from Rockford, Ill.,

on May 7, 1907, were withdrawn at the hearing. The allegations of violations of sections 2 and 3 of the act also were withdrawn.

The shipments left in controversy are described in the following table:

Date.	Point of origin.	Route.	Commod- ity.	Weight (pounds).	Rate.	Charges col- lected.	Rate via Pen- sa- cola.	Repara- tion claimed.
Dec. 16, 1906	Milwaukee, Wis.	C. M. & St. P.; C. & E. L.; L. & N.	Machinery	29,600	\$0.57	\$168.72	\$0.53	\$11.84
Sept. 22, 1906	.....do.....	C. & N. W.; C. I. & L.; L. & N.	.....do.....	303	1.04	3.13	.99	.16
Oct. 9, 1906	.....do.....	.....do.....	.....do.....	110	1.04	1.14	.99	.05
May 30, 1907	Wyandotte, Mich.	M. C.; C., C., C. & St. L.; L. & N.	Bicarbon- ate of soda.	30,300	.45	136.35	.42	9.09
Dec. 28, 1906	Ludington, Mich.	P. M.; C., H. & D.; L. & N.	Pump.....	2,200	1.51½	33.23	1.27	5.89
Sept. 4, 1907	Salem, Ohio.....	Pa. Co.; C., A. & C. P.; C., C. & St. L.; L. & N.	Machinery	230	1.12	2.58	.99	.80
Aug. 31, 1907	Milwaukee, Wis.	C. & N. W.; C., C. & L.; L. & N.	.....do.....	150	1.19	1.78	.99	.80
May 19, 1907	Cleveland, Ohio.	Pa. Co.; C., A. & C. P.; C., C. & St. L.; L. & N.	Castings...	1,033	.85½	8.83	1.53½	3.30
Oct. 9, 1906	Milwaukee, Wis.	C. & N. W.; C., I. & L.; L. & N.	.....do.....	630	.49	3.07	.....	.....
Sept. 2, 1906	.....do.....	C. M. & St. P.; C., I. & L.; L. & N.	.....do.....	990	.49	4.81	.....	.....

¹ Ohio River combination.

All of these shipments moved through Louisville, Ky., and Pensacola, Fla. No joint through rates were in effect, and charges apparently were collected on the basis of the rates applicable to and from the Ohio River. When the first seven shipments moved, lower combination rates were in effect over the same routes, based on Pensacola, and as there was no tariff authority for the application of the Ohio River combinations in preference to the combinations on Pensacola, the lower combinations based on Pensacola were legally applicable. Three of the shipments described included castings. No published interstate rate was applicable on castings from Pensacola to Milton. The legal rates were applied to the two shipments last named, but the rate applied to the third from last shipment was not legally applicable.

We find that all of the shipments described in the foregoing table were charged for unlawfully; that complainant made the shipments as described and paid and bore charges thereon at the rates herein found unlawful; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found lawful; and that the .

Land & Lumber Company, successor to complainant, is entitled to reparation in the sum of \$11.84, with interest from January 1, 1907, from the Chicago, Milwaukee & St. Paul Railway Company, the Chicago & Eastern Illinois Railroad Company, and the Louisville & Nashville Railroad Company; in the sum of 21 cents, with interest from October 20, 1906, from the Chicago & North Western Railway Company, the Chicago, Indianapolis & Louisville Railway Company, and the Louisville & Nashville Railroad Company; in the sum of \$9.09, with interest from June 1, 1907, from the Michigan Central Railroad Company, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and the Louisville & Nashville Railroad Company; in the sum of \$5.39, with interest from January 15, 1907, from the Pere Marquette Railroad Company, the Cincinnati, Hamilton & Dayton Railway Company, and the Louisville & Nashville Railroad Company; in the sum of 30 cents, with interest from September 16, 1907, from the Pennsylvania Company, the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, and the Louisville & Nashville Railroad Company; in the sum of 30 cents, with interest from September 10, 1907, from the Chicago & North Western Railway Company and the Louisville & Nashville Railroad Company; and in the sum of \$3.30, with interest from May 24, 1907, from the Pennsylvania Company, the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, and the Louisville & Nashville Railroad Company.

Three of the shipments involved moved in part over the rails of carriers not parties to the record. No order can be entered against these railroads in this proceeding, but they will be expected to participate in the reparation awarded on the shipments which moved over their rails.

An appropriate order will be entered.

HALL, Commissioner, dissents.

20 I. C. C.

No. 6945.¹
BAGDAD LAND & LUMBER COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted February 3, 1915. Decided May 19, 1916.

Finding that the rates charged for the interstate transportation of turpentine stills and fixtures, turpentine in tanks, turpentine cups, and dip barrels from Paxton, Fla., to Milton, Fla., and of railroad rails, trestle timbers, spikes, and angle bars from Paxton, Fla., to Laurel Hill, Fla., were not unreasonable, affirmed on rehearing.

G. M. Stephen and S. J. Bolton for complainant.
William Burger for defendant.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

The complaint in No. 6945 alleged that the rates charged on certain shipments of turpentine stills and fixtures, turpentine in an iron tank, turpentine cups, rosin, and dip barrels transported over defendant's line in December, 1913, from Paxton, Fla., through the state of Alabama to Milton, Fla., were unreasonable and unjustly discriminatory. The complaint in No. 7087 alleged that the rates charged on certain shipments of railroad material, consisting of steel rails, trestle timber, spikes, and angle bars, transported over defendant's line in February, 1914, from Paxton through the state of Alabama to Laurel Hill, Fla., were unreasonable and unjustly discriminatory. Reparation was asked in both complaints. We found in our original report that the rate charged on the shipment of rosin was unreasonable and awarded reparation thereon, but that the rates charged on the other articles shipped were not shown to have been unreasonable. Upon petition filed by complainant September 16, 1915, the cases were opened for rehearing. The principal facts are sufficiently set forth in our original report and need not be restated.

Complainant's evidence at the rehearing in support of its allegations that the rates assailed were unreasonable consists principally of comparisons of the class rates charged with rates on the same

¹ The proceeding also embraces complaint in No. 7087, *Same v. Same*; and Portion of Louisville & Nashville Fourth Section Application No. 1952.

commodities for similar distances prescribed by the Florida state commission and with rates, both intrastate and interstate, in effect in the same general territory and other territories where transportation conditions are said but are not shown to be similar. Other evidence is that the rates in effect over defendant's line from Paxton to Pensacola are lower than the rates to Milton, an intermediate point, but this departure from the rules of the fourth section is protected by an appropriate application, and defendant states that the general revision of rates which is proceeding in accordance with orders heretofore issued by the Commission will eliminate all of the fourth section deviations that may be involved.

Defendant insists that the sparsely settled country through which it operates in northwestern Florida and southeastern Alabama justifies higher rates there than elsewhere on its system. It insists that the traffic carried over that division of its system which traverses the territory is light and consists largely of lumber and naval stores, both of which are low-grade commodities. The intrastate rates prescribed by the Florida state commission, because of which defendant agreed at the original hearing to establish commodity rates lower than the class rates in force at the time of movement, are said not to afford a fair basis of comparison, for the reason that they are unreasonably low. Exhibits show that the ton-mile earnings on freight moving by way of this division are greater than the average earnings for defendant's entire system, but that the net operating revenue is one-fourth less, largely because the tonnage per mile is one-third less.

The evidence submitted is insufficient to show that the class rates charged were unreasonable, and as future shipments between the points involved are improbable, commodity rates will be denied.

Our previous finding is affirmed.

No. 6948.

WALTER A. ZELNICKER SUPPLY COMPANY
v.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted November 26, 1915. Decided May 19, 1916.

Combination fifth-class rate of 34 cents per 100 pounds charged by defendants for the transportation of a carload of used steel car trucks from Howe, Okla., to Plainview, Ark., found unreasonable on rehearing to the extent that it exceeded 20 cents per 100 pounds. Former award of reparation increased.

J. D. Fidler for complainant.
No appearance for defendants.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

This proceeding involves a carload shipment of used steel car trucks that was made from Howe, Okla., to Plainview, Ark. The shipment weighed 64,430 pounds and moved: Chicago, Rock Island & Pacific Railway from Howe to Ola, Ark., 87 miles; Central Railway of Arkansas thence to Plainview, 7 miles. Charges were collected in the sum of \$219.06 at a combination rate of 34 cents per 100 pounds, composed of fifth-class rates of 24 cents from Howe to Ola and 10 cents from Ola to Plainview. We found in our original report that the rate charged was unreasonable to the extent that it exceeded 29 cents and awarded reparation in the sum of \$32.21. Complainant filed a petition for rehearing, which was granted. Rehearing has been had and the case is now before us on the whole record.

Complainant contends that the 29-cent rate which we prescribed is unreasonable for a haul of 94 miles, particularly as the same rate applies from Kansas City, Mo., to Plainview, a distance of 468.8 miles. The class D rate of 20 cents in effect when the shipment moved, composed of a rate of 15 cents from Howe to Ola and 5 cents from Ola to Plainview, applicable on car trucks returned when used outbound to transport rolling stock, also is cited. Defendants were not represented at either hearing and no justification is offered for restricting the class D rate to the return of car trucks used outbound to transport rolling stock.

We find that the rate charged was and for the future will be unreasonable to the extent that it exceeded or may exceed 20 cents per 100 pounds, which we find reasonable; that complainant made the shipment as described in this and our former report and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges collected and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$90.20, with interest from January 8, 1914. As the reparation previously awarded has been paid to complainant, an order will now be entered for \$57.99.



No. 8153.

AMERICAN CYANAMID COMPANY

v.

CENTRAL OF GEORGIA RAILWAY COMPANY ET AL

Submitted December 3, 1915. Decided May 9, 1916.

Rate of \$3.25 per net ton applied on shipments of imported cyanamid from Savannah and Brunswick, Ga., to Dothan, Ala., found to have been unreasonable and unjustly discriminatory to the extent that it exceeded \$2.57 per net ton. Reparation awarded.

A. D. Whittemore for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cyanamid, a fertilizer material, at Niagara Falls, Ontario. By complaint, filed July 10, 1915, it alleges that the rate of \$3.25 per net ton applied by defendants on two shipments of cyanamid in January and February, 1914, from Brunswick and Savannah, Ga., to Dothan, Ala., was unreasonable and unjustly discriminatory. Reparation is asked.

Both shipments originated at Niagara Falls and were shipped by rail to New York, N. Y., thence by water to the ports in Georgia, and thence by rail to destination. One shipment was consigned originally to Brunswick, the other to Savannah, in care of forwarding agents, and both were promptly forwarded to Dothan. Complaint is made

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only of the rate applied from Savannah and Brunswick to Dothan. One of the shipments weighed 100,680 pounds, the other 40,370 pounds. Charges were collected in the sum of \$163.47 on one shipment and in the sum of \$65.60 on the other, at the rate of \$3.25 per net ton applicable on domestic fertilizer.

An import rate of \$2.57 per net ton applied from Savannah or Brunswick to Dothan, applicable on carbonate of potash, manure salts, grape pomace, nitrate of soda, sulphate of ammonia, and several other fertilizer materials. Cyanamid was not specifically included in the list of commodities taking that rate, but, effective April 3, 1914, was added to it. Cyanamid is used in the manufacture of fertilizer, is sold in competition with the other fertilizer materials on which the import rate of \$2.57 applied, and it is said not to exceed the other materials in value. Southern classification rates it with sulphate of ammonia, nitrate of soda, phosphate rock, and a number of similar commodities under the description "fertilizer." Complainant states that there are no transportation reasons for maintaining a higher rate on cyanamid than on other fertilizer materials. Defendants were not represented at the hearing.

We find that the rate charged on complainant's shipments was unreasonable to the extent that it exceeded \$2.57 per net ton; that complainant made the shipments involved as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$34.10, with interest, from the Central of Georgia Railway Company, and in the sum of \$13.74, with interest, from the Central of Georgia Railway Company and the Atlanta, Birmingham & Atlantic Railroad Company.

An order awarding reparation will be entered, but as the \$2.57 rate has been in effect two years no order will be entered for the future.

No. 7846.

KISTLER, LESH & COMPANY ET AL.

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY
ET AL.

Submitted December 9, 1915. Decided May 2, 1916.

Rate of 42 cents per 100 pounds charged for the transportation of carload shipments of sulphuric acid in iron drums from Grasselli, Ala., to Morganton, N. C., found to have been unreasonable. Maximum rate of 20 cents per 100 pounds, minimum 40,000 pounds, prescribed for the future. Reparation awarded.

H. Earlton Hanes and Alpheus Winter for complainants.

Alex. M. Bull for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainants are Kistler, Lesh & Company, a copartnership composed of A. M. Kistler, S. Kistler, H. F. Lesh, B. W. Fredericks, and the estate of Wilson Kistler, engaged in the tannery business at Morganton, N. C., under the name of Burke Tanning Company; and the Grasselli Chemical Company, a corporation engaged in the production of sulphuric acid at Grasselli, Ala. By complaint, filed March 23, 1915, as amended, they allege that the rate of 42 cents per 100 pounds charged by defendants for the transportation of six carloads of sulphuric acid in iron drums from Grasselli to Morganton during 1914 and 1915 was unreasonable to the extent that it exceeded 20 cents per 100 pounds. Reparation is asked and the establishment of a reasonable rate for the future.

Each shipment consisted of 22 iron drums of sulphuric acid weighing from 39,337 pounds to 40,432 pounds, and moved over the lines of the Alabama Great Southern Railroad and the Southern Railway. Charges were collected at the sixth-class rate of 42 cents per 100 pounds which was applicable. The southern classification rated sulphuric acid, carloads, in drums, minimum 36,000 pounds, or in tank cars, minimum capacity of the tank, sixth class. An informal complaint was filed against the rate assailed in October, 1914, and defendant Southern Railway stated that it purposed establishing a commodity carload rate of 20 cents per 100 pounds on acid in drums and in tank cars. Such a rate was established on April 22,

1915, but only on shipments in tank cars, and without change in the rate applicable on shipments in drums.

Morganton is 453 miles from Grasselli and the rate of 42 cents yields 18.5 mills per ton-mile, while the rate asked would yield 8.8 mills.

The Morganton complainant uses about four cars of acid per annum and has neither tank cars nor facilities for handling acid from tanks. It uses drums which it owns and which are returned to the Grasselli Chemical Company empty at the sixth-class rate of 41 cents per 100 pounds from Morganton to Grasselli.

Southern, western, and official classifications rate sulphuric acid in carloads, either in drums or tank cars, the same, and complainants cite numerous class rates on sulphuric acid and other liquors such as tanning extract and sirup and molasses from and to points in Carolina territory applicable alike to shipments in drums and in tank cars. The rate on acid in drums from Morganton to Grasselli is 1 cent per 100 pounds less than in the direction in which the shipments moved, but this is due to the difference in the class-rate adjustments northbound and southbound. Comparisons are made with carload commodity rates of 20 cents per 100 pounds to and from the points involved on cement, salt, lime, tar in drums, pitch in drums, and asphalt in drums or tank cars, and with a commodity rate of 25½ cents per 100 pounds on fertilizer; also with the rates from Grasselli to Stackhouse, N. C., on the Southern Railway about 96 miles west of Morganton and intermediate to it over the route of movement. The class rates from Grasselli to Stackhouse are the same as to Morganton, but a commodity rate of 17½ cents per 100 pounds applies to Stackhouse on acid in tank cars. Complainants cite *International Agricultural Corporation v. L. & N. R. R. Co.*, 22 I. C. C., 488, wherein rates were prescribed on sulphuric acid in tank cars from Copper Hill, Tenn., as follows: To Columbia, S. C., 409 miles, \$3.15 per ton of 2,000 pounds, minimum 40 tons, revenue per ton-mile, 7.7 mills; to Athens, Ga., 258 miles, \$2.20, revenue per ton-mile, 8.5 mills; to Charleston, S. C., 494 miles, \$3.50, revenue per ton-mile, 7.1 mills.

Respondents cite rates from Grasselli, Pulaski, Va., and Philadelphia, Pa., to other acid-consuming points in the general vicinity of Morganton, applicable to shipments in iron drums and in iron and glass carboys, all of which are higher, distances considered, than the rate assailed. They also direct attention to the fact that Morganton formerly drew its acid from Philadelphia and from Buffalo, N. Y., paying a rate of 53 cents per 100 pounds from both points. The failure to make the reduced rate of 20 cents apply to acid in iron drums, as well as on acid in tanks, is attributed by defendants to the much greater volume of the tank-car movement and the materially lower value of the acid transported in tanks. Defendants

state that the level of their sixth-class rates is high enough to warrant the application of such rates to shipments in drums as well as to shipments in tanks, but that in establishing commodity rates on tank-car shipments on the general basis prescribed in the *International Agricultural Corporation Case, supra*, they have had to adopt rates less than would be reasonable for shipments in drums, and that it is their uniform practice now to apply the higher class rates to such traffic.

It is not shown that acid of greater purity or higher value is not or can not be shipped in tank cars or that only acid of better grades and greater value is shipped in drums, and the testimony in these respects does not convince us that higher or different rates should prevail for shipments in drums.

Respondents rent such tank cars as are furnished by them, paying three-fourths of a cent per mile therefor, and while per diem must be paid for foreign box cars used for shipments in drums, the box cars when unloaded are available for general use, and additional revenue is received for the empty drums returned. It is suggested that sulphuric acid is an undesirable article of commerce because of its corrosive nature, but in the *International Agricultural Corporation Case, supra*, we said, at page 493, that—

Liability to loss and damage is exceedingly small; nor does it appear that there is any danger of damage to carriers' property from leakage or otherwise. * * * On the whole the movement of this acid affords the carrier a very desirable business.

We find that the rate charged for the transportation of the shipments involved was and is unreasonable to the extent that it exceeded and exceeds 20 cents per 100 pounds, carloads, minimum weight 40,000 pounds, and that for the future the reasonable rate to apply to sulphuric acid in iron drums from Grasselli to Morganton should not exceed the rate contemporaneously applicable from and to the same points on like traffic in tank cars. We further find that the shipments were made as described; that the Grasselli Chemical Company paid and bore the charges on all of the shipments which moved prior to September 17, 1914; Kistler, Lesh & Company the charges on the shipments which moved subsequently to that date, at the rate herein found to have been unreasonable; that complainants have been damaged to the extent of the difference between the charges paid and the charges which would have accrued at the rate herein found reasonable; that the Grasselli Chemical Company is entitled to reparation in the sum of \$171.16, with interest from September 30, 1914; and that Kistler, Lesh & Company are entitled to reparation in the sum of \$352.95, with interest from September 30, 1915.

Appropriate order will be entered.

No. 7802.

MINNESOTA & ONTARIO POWER COMPANY

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.

Submitted September 9, 1915. Decided May 9, 1916.

Rate of 70 cents per 100 pounds charged for the transportation of news print paper in carloads from International Falls, Minn., to Denver, Colo., found to have been unreasonable to the extent that it exceeded 61 cents. Reparation awarded.

B. G. Dahlberg for complainant.

C. Frankenberger for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of news print paper at International Falls, Minn. By complaint, filed March 3, 1915, it alleges that the rate charged by defendants for the transportation of 33 carloads of news print paper from International Falls to Denver, Colo., between February 10, 1912, and July 8, 1912, was unreasonable and unjustly discriminatory. Reparation is asked. The claims were presented to the Commission informally within two years after they accrued.

The shipments aggregated 1,924,708 pounds, and moved: Minnesota, Dakota & Western Railway from International Falls to Falls Junction, Minn.; Duluth, Rainy Lake & Winnipeg Railway, leased and operated by the Duluth, Winnipeg & Pacific Railway, to Virginia, Minn.; Duluth, Missabe & Northern Railway to Duluth, Minn.; Chicago, St. Paul, Minneapolis & Omaha Railway to Council Bluffs, Iowa; Union Pacific Railroad to destination. Charges were collected in the sum of \$13,473, at the legal combination rate of 70 cents per 100 pounds, composed of a joint commodity rate of 10 cents per 100 pounds from International Falls to Duluth, Minn., and a joint commodity rate of 60 cents beyond.

Complainant contends that the rate charged was unreasonable to the extent that it exceeded 61 cents per 100 pounds. A rate of 61 cents was contemporaneously in force from International Falls to Denver, but the Minnesota, Dakota & Western Railway was 1

shown in the tariff naming it as a participating carrier. The same rate also applied over the route of movement, from Falls Junction, $4\frac{1}{2}$ miles from International Falls, by way of the Minnesota, Dakota & Western. Defendants explain that the higher rate charged was due to a misunderstanding of the officials of the Minnesota, Dakota & Western with respect to the requirement of filing a concurrence in the tariff containing the 61-cent rate from International Falls. When advised of the necessity of such action, the Minnesota, Dakota & Western, on October 29, 1912, through agent Poteet filed its concurrence in the tariff containing the joint rate from International Falls to Denver. Following our order in *Colorado Mfrs. Asso. v. A., T. & S. F. Ry. Co.*, 29 I. C. C., 544, 549, which required a reduction in the rates on news print paper from Chicago to Colorado common points from 60 cents to 53 cents, the rate from International Falls to Denver was reduced to 54 cents per 100 pounds, thereby maintaining the former relationship of rates as between these points of origin. This 54-cent rate is still in effect. Defendants admit that the 70-cent rate charged was unreasonable to the extent that it exceeded 61 cents per 100 pounds, and express their willingness to make reparation accordingly.

We find that the rate charged was unreasonable to the extent that it exceeded 61 cents per 100 pounds; that complainant made the shipments involved as described and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges borne and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$1,732.29, with interest from February 5, 1914, the date of payment of the unreasonable rate.

An order awarding reparation will be entered. The Duluth, Missabe & Northern Railway Company is not named as party defendant to this proceeding, but it was a party to the joint rate and participated in the transportation of the shipments and therefore will be expected to join in the payment of reparation. As a rate of 54 cents is now in force, no order will be entered for the future.

89 I. C. C.

No. 7856.

WM. HENDERSON

v.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL.

Submitted December 15, 1915. Decided May 9, 1916.

Charges collected for the transportation of two carloads of blackstrap molasses from Burguières, La., to Kansas City, Mo., found to have been unreasonable. Reparation awarded.

Gustaf R. Westfeldt, jr., for complainants.

C. W. Owen, for Morgan's Louisiana & Texas Railroad & Steamship Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Hunt Henderson, William Henderson, and Adam Gambel, copartners, engaged in refining sugar under the name of Wm. Henderson, with their principal office at New Orleans, La. By complaint, filed March 25, 1915, they allege that the rate of 30 cents per 100 pounds charged by defendants for the transportation of two tank-car loads of blackstrap molasses shipped from Cypremort, La., to Kansas City, Mo., on January 27, 1914, was unreasonable to the extent that it exceeded 27 cents per 100 pounds. Reparation is asked.

The shipments aggregated 179,864 pounds and originated at Burguières, La., also known as Cypremort Plantation, a nonagency station on the line of Morgan's Louisiana & Texas Railroad & Steamship Company. They moved: Morgan's Louisiana & Texas Railroad & Steamship Company to Lafayette, La.; Louisiana Western Railroad to Lake Charles, La.; Kansas City Southern Railway to Bloomburg, Tex.; Texarkana & Fort Smith Railway to Texarkana, Tex.; Kansas City Southern Railway beyond. Charges were collected in the sum of \$539.59, at a rate of 30 cents per 100 pounds, minimum 50,000 pounds, applicable to molasses not limited as to value. A rate of 27 cents per 100 pounds, minimum capacity of tank, applied over the route of movement from Burguières to Kansas City on blackstrap molasses, value limited to 8 cents per gallon, and so receipted for.

The tank cars in which the molasses involved was transported were filled to their capacity. The shipments were delivered to the initial carrier without declaration of value in the bills of lading. Conductors of freight trains execute bills of lading covering shipments originating at Burguières, and the bills of lading covering the shipments were executed by the conductor of the train moving the shipments from that point. He failed to advise the shipper that defendants' tariff provided alternative rates, and that the bills of lading did not contain a limitation as to value. The molasses was worth less than 8 cents per gallon, and the omission of any statement of value in the bills of lading when the shipments were made was apparently due to an oversight.

We held in *Harmon & Co. v. N. P. Ry. Co.*, 33 I. C. C., 370, that—

Whenever a shipment is tendered a carrier upon which its tariffs provide for the application of alternative rates dependent upon the value thereof, the duty rests upon the agent of the carrier to call the attention of the shipper to the different rates and secure his signature to a proper bill of lading.

The conductor was the carrier's agent in this case and had authority to execute the bills of lading.

The shipments were consigned by "The J. M. Burguières Co., Ltd.," to the "Champion Feed Co." While complainants were not named in the bills of lading, or freight bills, the consignor was, in fact, merely the agent of complainants and made the shipments for their account. Complainants sold the molasses f. o. b. destination, and in remitting to them the invoice price thereof the consignee deducted the amount of the freight charges. While complainants were not in the ordinary and generally accepted sense either the consignors or consignees, they were in substance the true consignors and ultimately bore the freight charges. The case, therefore, does not come within the rule which prohibits an award of reparation to a stranger to the transportation record. *Lindsay Bros. v. G. R. & I. Ry. Co.*, 15 I. C. C., 182; *Oden & Elliott v. S. A. L. Ry.*, 37 I. C. C., 345.

We find that the charges collected on the shipments were unreasonable to the extent that they exceeded the charges which would have accrued at a rate of 27 cents per 100 pounds, which we find to have been reasonable; that complainants made the shipments as described and paid and bore charges thereon herein found to have been unreasonable; that they were damaged to the extent that the charges paid exceeded the charges which would have accrued at the rate herein found reasonable; and that they are entitled to reparation in the sum of \$53.96, with interest from February 13, 1914.

An order will be entered accordingly.

HALL and DANIELS, *Commissioners*, dissent.

No. 7880.

MERRIAM & MILLARD COMPANY ET AL

v.

CHICAGO & ALTON RAILROAD COMPANY ET AL

Submitted July 21, 1915. Decided May 9, 1916.

Following *Omaha Grain Exchange v. C. & A. R. R.*, 32 I. C. C., 597, reparation awarded on certain shipments of coarse grain and alfalfa feed from Omaha, Nebr., to Vandalia, Auxvasse, McCredie, Fulton, and New Bloomfield, Mo.

Edward P. Smith for complainants.

G. M. Entrikin for Wabash Railroad Company and its receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations, one engaged in the grain business, the other two in manufacturing and selling alfalfa feed, with their principal offices at Omaha, Nebr. By complaint, filed April 3, 1915, they allege that the rates charged by defendants for the transportation of coarse grain and alfalfa feed from Omaha to Vandalia, Auxvasse, McCredie, Fulton, and New Bloomfield, Mo., in November and December, 1913, and January and February, 1914, were unreasonable. Reparation is asked. The Missouri Valley Elevator Company, engaged in the grain business at Omaha, was permitted to intervene at the hearing.

Vandalia is on the main line of the Chicago & Alton between Mexico, Mo., and the Mississippi River. The other destinations are on the branch of the Chicago & Alton that extends south from Mexico. The shipments moved: Wabash Railroad to Mexico; Chicago & Alton Railroad to destination. Complainant Merriam & Millard Company's shipments consisted of corn and oats: One carload, weighing 40,000 pounds, to Vandalia; one weighing 60,000 pounds, to Fulton; one weighing 66,000 pounds to New Bloomfield; two aggregating 132,000 pounds, to Auxvasse; three aggregating 198,000 pounds, to McCredie. Complainant Omaha Alfalfa Milling Company shipped one carload of alfalfa feed, weighing 30,000 pounds, to Auxvasse; complainant M. C. Peters Mill Company, one carload of alfalfa feed of the same weight to Fulton. Intervener shipped one carload of oats weighing 40,000 pounds to Vandalia March, 1915. Charges were collected by defendants at a rate of 17 cents per 100 pounds to Auxvasse, McCredie, and New Bloomfield, 13 cents on complainant Merriam & Millard Company's shipment to Fulton, 17 cents on complainant M. C. Peters Mill Company's

shipment to Fulton, 16½ cents on complainant Merriam & Millard Company's shipment to Vandalia, 13 cents on intervenor's shipment to Vandalia. The rates charged appear to have been combination rates, although a joint class B rate of 19½ cents, governed by western classification exceptions, applied on corn, oats, and alfalfa feed from Omaha and Council Bluffs, Iowa, to all of the destinations involved during the entire period in controversy. All of the shipments therefore were undercharged.

The issues are concluded by *Omaha Grain Exchange v. C. & A. R. R.*, 32 I. C. C., 597, in which we prescribed maximum reshipping rates of 9 cents on wheat and 8 cents on corn and articles taking the same rates from Omaha, South Omaha, and Council Bluffs through Mexico to main-line stations of the Chicago & Alton from Mexico to the Mississippi River, which would include Vandalia; and found that the rates which had been charged on these commodities were unreasonable to the extent that they exceeded the present rates of 11 cents from Omaha to Auxvasse, 11.5 cents to McCredie and Fulton, and 12.5 cents to New Bloomfield. Alfalfa feed takes the rates applicable on corn. Defendants' witness testified that they had checked all of the claims except intervenor's, in accordance with the decision in the *Omaha Grain Exchange Case, supra*, and that they were correct. Defendant Wabash Railroad Company, which assumed the defense, expressed willingness to pay its share of intervenor's claim based on the difference between the 13-cent rate charged and 8 cents, as ordered in the case cited.

Upon all of the facts of record and following *Omaha Grain Exchange v. C. & A. R. R.*, *supra*, we find that the rates assailed were unreasonable to the extent that they exceeded rates of 11.5 cents per 100 pounds to Fulton and McCredie, 8 cents to Vandalia, 11 cents to Auxvasse, and 12.5 cents to New Bloomfield, which we find to have been reasonable; that complainants and intervenor made the shipments as described and paid and bore charges thereon at the rates herein found to have been unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that complainant Merriam & Millard Company is entitled to reparation in the sum of \$260.80, with interest from January 10, 1914; complainant Omaha Alfalfa Milling Company to reparation in the sum of \$18, with interest from January 17, 1914; complainant M. C. Peters Mill Company to reparation in the sum of \$16.50, with interest from January 15, 1914; and intervenor, Missouri Valley Elevator Company, to reparation in the sum of \$20, with interest from March 18, 1915.

An order will be entered accordingly. Defendants may waive undercharges found outstanding.

No. 8176.
J. S. H. CLARK LUMBER COMPANY
v.
SEABOARD AIR LINE RAILWAY ET AL.

Submitted November 30, 1915. Decided May 2, 1916.

Shipment of lumber from Hoffman, N. C., to McDonoughs, N. J., not found misrouted and rate charged not found to have been unreasonable. Complaint dismissed.

Fred B. McCracken for complainant.

R. Walton Moore and *J. H. Ketner* for Seaboard Air Line Railway; Richmond, Fredericksburg & Potomac Railroad Company; and Washington Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale lumber business, with headquarters in New York, N. Y. By complaint, filed July 23, 1915, it alleges that defendants' failure in March, 1915, to forward a carload of lumber from Hoffman, N. C., to McDonoughs, N. J., by way of Norfolk, at a rate of 20.75 cents per 100 pounds, was unlawful. Reparation is asked and the establishment of a rate of 20.75 cents.

The shipment was made March 27, 1915, consigned to complainant and routed by the shipper "care Raritan River Railway delivery." It was moved by the Seaboard Air Line from Hoffman to Richmond, Va., 239 miles; by the Richmond, Fredericksburg & Potomac Railroad and the Washington Southern Railway from Richmond to Washington, D. C., 116 miles; by the Philadelphia, Baltimore & Washington Railroad and the Pennsylvania Railroad from Washington through Philadelphia, Pa., to South Amboy, N. J., 200 miles; and by the Raritan River Railroad from South Amboy to destination. Charges were collected in the sum of \$80.61 on 34,300 pounds of lumber at a joint rate of 23.5 cents per 100 pounds, which was legally applicable over the route of movement. The same rate applied by way of Norfolk, Va., and by that route exceeded the aggregate of the rates applicable to and from Norfolk, which were 10.5 cents per 100 pounds to Norfolk and 11.8 cents beyond. Cor

plainant contends that defendants should have forwarded the shipment by way of Norfolk, and that the joint rate over that route should not have exceeded the aggregate of the intermediate rates to and from Norfolk. Effective July 5, 1915, the joint rate by way of Norfolk was reduced to 20.75 cents, rectifying the fourth section departure.

The shipper did not route the shipment through Norfolk. The only routing instructions given were "Raritan River Railway delivery," which were obeyed. We find that the shipment was not misrouted, and that the rate charged is not proven unreasonable by the existence of a lower combination rate over another route. As no other evidence was adduced against it, the complaint will be dismissed.

39 I. C. C.

No. 8215.

FORD MANUFACTURING COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

Submitted November 23, 1915. Decided May 19, 1916.

Rate of 15 cents per 100 pounds charged by defendants for the transportation of four carloads of candle pitch from Ivorydale, Ohio, to South Bend, Ind., found to have been unreasonable to the extent that it exceeded the rate contemporaneously applicable on coal and gas house pitch, coal and gas house tar, and petroleum pitch and petroleum tar. Reparation awarded.

B. F. Fuller for complainant.

James M. Simon for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Vandalia Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of roofing and roofing materials, with its principal office at St. Louis, Mo. By complaint, filed July 30, 1915, it alleges that the rate of 15 cents per 100 pounds charged by defendants for the transportation of four carloads of candle pitch from Ivorydale, Ohio, to South Bend, Ind., between July 11 and July 21, 1913, was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of 11 cents per 100 pounds. Reparation is asked. The claim was presented to the Commission informally April 27, 1914.

The shipments were made and charges were collected on them in the sum of \$246.12 at a rate of 15 cents per 100 pounds on 164,080 pounds, which rate was the fifth-class rate applicable under official classification to candle tar. Complainant asserts that the shipments consisted of candle pitch, the refuse from soap factories. Defendants' tariffs carried no specific rate on candle pitch, but a commodity rate of 11 cents per 100 pounds was in effect, which was applicable to coal or gas house pitch, coal or gas house tar, petroleum pitch and petroleum tar, and which equaled 90 per cent of the sixth-class rate. Complainant contends that a rate should have been maintained on candle pitch on the same basis.

Effective September 27, 1913, defendants established a carload commodity rate of 11 cents per 100 pounds, minimum weight 40,000 pounds, on candle tar and candle pitch, manufactured from the residue of candle or soap factories, from Ivorydale to South Bend. Effective October 26, 1914, and as a result of our decision in *The Five Per Cent Case*, 31 I. C. C., 351, this rate was increased to 11.3 cents along with the rate on coal and gas house pitch, coal and gas house tar, petroleum pitch and petroleum tar. Complainant expresses satisfaction with the present rates.

The evidence shows that candle pitch and candle tar are shipped and handled under the same conditions as coal and gas house pitch, coal and gas house tar, petroleum pitch and petroleum tar; that they are used for the same purposes, and that they are of about the same value. All are used in the manufacture of prepared roofing. Defendants admit that there was and is no justification for a higher rate on candle pitch or candle tar than on the other pitches and tars enumerated, and that the rate charged was unreasonable to the extent that it exceeded the rate in effect on these other articles. They express willingness to make reparation on that basis.

No evidence was adduced in support of the allegation of unjust discrimination.

We find that the rate assailed was, and for the future will be, unreasonable to the extent that it exceeded and may exceed the rate contemporaneously applicable on coal and gas house pitch, coal and gas house tar, and petroleum pitch and petroleum tar; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been thereby damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$65.63, with interest from September 6, 1913, on the basis of a rate of 11 cents, the rate in effect on the other pitches named when the pitch in controversy moved.

An order will be entered accordingly.

39 I. C. C.

No. 7587.

COLORADO FUEL COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF
TEXAS ET AL.

Submitted October 31, 1915. Decided May 19, 1916.

Reconsigning and back-haul charges assessed on a carload shipment of coal from Hickory Canon, Colo., to Gould, Okla., found unlawful. Reparation awarded.

Henry Lampl and *Tom Elcock* for complainants.

C. P. Dowlin for Fort Worth & Denver City Railway Company and Colorado & Southern Railway Company.

C. L. Fontaine for Missouri, Kansas & Texas Railway Company of Texas and Wichita Falls & Northwestern Railway Company.

A. R. Brasted for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainants are D. R. Thomas, J. R. Everett, and C. H. Boice, copartners, engaged in the wholesale coal business at Walsenburg, Colo., and Wichita, Kans., under the firm name of the Colorado Fuel Company. By complaint, filed December 14, 1914, they allege that the charges collected by defendants for the transportation of one carload of coal from Hickory Canon, Colo., to Gould, Okla., in October, 1913, were unreasonable. Reparation is asked.

The shipment moved from Hickory Canon on October 13, 1913: Colorado & Southern Railway to Sixela, N. Mex.; Fort Worth & Denver City Railway to Wichita Falls, Tex.; Wichita Falls & Northwestern Railway system beyond. On October 17, 1913, complainants requested a representative of the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, at Wichita to "divert the car at the balance of the through rate, letting all charges follow, straight to ourselves, Liberal, Kans." Promptly upon the receipt of complainants' request the Rock Island transmitted to the Fort Worth & Denver City Railway an order requesting diversion "at Dalhart," instead of "at the balance of the through rate." Dalhart is intermediate to Gould over the route of movement and is the authorized

junction between the Fort Worth & Denver City Railway and the Rock Island for the interchange of coal shipped from Hickory Canon to Liberal. The shipment passed Dalhart at 4.05 p. m. October 17, 1 hour and 15 minutes prior to the receipt of the reconsigning order by the Fort Worth & Denver City Railway, and arrived at Amarillo, Tex., at 9.25 p. m. on the same date. After being informed by the Fort Worth & Denver City Railway that the shipment had passed Dalhart and that a charge in addition to the through rate would be assessed for the back haul from Amarillo to Dalhart, the Rock Island, without communicating further with complainants, attempted to cancel the reconsigning order and instructed the Fort Worth & Denver City Railway to send the shipment to Gould, the original billed destination. These instructions were not received by the Fort Worth & Denver City Railway until 11.15 a. m. on October 19. At 11.45 a. m. October 19, 30 minutes later, the shipment moved from Amarillo, consigned to Liberal by way of Dalhart. It was intercepted at Channing, Tex., 52.3 miles from Amarillo, and forwarded thence to Gould.

The shipment weighed 60,000 pounds, and charges were collected at the joint rate of \$3.50 per net ton from Hickory Canon to Gould plus 6 cents per 100 pounds for the back haul from Amarillo to Channing, a reconsigning charge of \$2, and a demurrage charge of \$16 which accrued at Gould. Complainants seek refund of the back haul, reconsigning, and demurrage charges, in the sum of \$54, and reimbursement for expenses in the sum of \$12 incurred by their representative in effecting the resale and delivery of the shipment at Gould. Freight charges were paid and borne by the consignee in the sum of \$105 at the joint rate of \$3.50 per net ton, and are not attacked.

Complainants contend that their reconsigning order did not authorize a back haul, and that unless the shipment could have been reconsigned to Liberal at the through rate defendants should have sought further instructions before reconsigning it. The Fort Worth & Denver City Railway asserts that it was justified in back hauling the shipment from Amarillo, as the reconsigning order received from the Rock Island did not indicate that the through rate to Liberal was not to be exceeded and the order was not countermanded in time to prevent a back haul.

The Rock Island construed complainants' instructions as conferring conditional and not absolute authority to reconsign the shipment. Undoubtedly it should have apprised the Fort Worth & Denver City Railway of the exact conditions upon which reconsignment was requested, and should have acted with greater promptness

afterwards, but the Fort Worth & Denver City Railway was responsible for the back-haul movement. It was directed by the Rock Island to reconsign the shipment at Dalhart, not at Amarillo, and the back haul from Amarillo to Channing was unauthorized. Defendants' tariff authorized reconsignment at a charge of \$2 per car in addition to the through rate, where no back haul or out of line haul was involved, and provided for an additional charge of 6 cents per 100 pounds for back hauls or out of line hauls of more than 100 miles but not exceeding 120 miles. Properly speaking, there was no reconsignment of the shipment, for it was actually transported to Gould, the original billed destination. There was merely an attempt to reconsign, which was abandoned by the carriers of their own volition, and the situation is not essentially different from what it would have been if no action whatever had been taken upon complainants' request. The back-haul and reconsigning charges, therefore, were unlawful.

Complainants demand refund of the demurrage charges on the theory that if a back-haul charge had not been assessed delivery would have been effected promptly upon arrival of the shipment at Gould. It appears, however, that the consignee had countermanded his order for the coal some time prior to the arrival of the shipment, and complainants' evidence does not satisfactorily establish their contention that no demurrage would have accrued if delivery had been tendered upon the basis of the joint through rate.

The Commission has no jurisdiction over complainants' claim for reimbursement on account of expenses incurred by their representative in arranging for a resale and delivery of the shipment at Gould.

We find that complainants made the shipment involved as described, and that the charges collected thereon were unlawful to the extent that they exceeded the charges which would have accrued on basis of the legal rate of \$3.50 per ton, plus demurrage charges; that complainants paid and bore the unlawful charges, have been damaged thereby, and are entitled to reparation from defendant Fort Worth & Denver City Railway, in the sum of \$38, with interest from October 28, 1913.

An order will be entered accordingly.

39 I. C. C.

No. 7180.
BURSON KNITTING COMPANY
v.
CHICAGO, INDIANA & SOUTHERN RAILROAD COMPANY
ET AL.

Submitted October 7, 1915. Decided May 24, 1916.

Rate on undyed and unfinished cotton hosiery from Rockford, Ill., to Philadelphia, Pa., not shown to have been unreasonable. Complaint dismissed.

C. S. Bather for complainant.

Ernest S. Ballard for official classification lines.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cotton knit hosiery, with its principal place of business at Rockford, Ill. By complaint, filed August 13, 1914, as amended, it alleges that the any-quantity rate of 85 cents per 100 pounds charged by defendants for the transportation of various shipments of undyed and unfinished cotton hosiery in compressed bales from Rockford to Philadelphia, Pa., during the two years before the complaint was filed was unjust and unreasonable. Reparation is asked and the establishment of reasonable carload and less-than-carload rates for the future.

The shipments consisted of two kinds of undyed and unfinished women's hosiery, manufactured from cotton yarn, one kind made in single pieces turned and hemmed at the top; the other, in two unjoined pieces, a foot and leg piece unfinished at the top and a separate top piece of ribbed cotton knitting in tubular form cut to length. About two-thirds of complainant's output is completely finished at Rockford. The remaining one-third consists of cheap grades and is only partly finished there because of the scarcity of labor. The portion not finished is packed in machine-pressed bales, 22 inches by 22 inches by 48 inches, covered with burlap and bound with wire, and is shipped to Philadelphia, where it is completely finished and made ready for sale. The bales average 270 pounds, or 13.5 pounds per cubic foot in weight, and \$68 per bale, or \$5.04 per cubic foot in value. Complainant's witness was unable to state

the value of unfinished hosiery at Rockford, but showed its wholesale value when finished at Philadelphia to be from \$1.50 per dozen to \$4 per dozen.

The official classification which governed the shipments prescribed an any-quantity rating on hosiery in bales, first class, but made no distinction between finished and unfinished hosiery. The first-class rate applicable was 85 cents and was charged on 114 specified shipments.

Complainant contends that its unfinished hosiery is raw material and should not be included in the classification description of hosiery until it has been finished and made ready for sale; and that the rate charged was and is unreasonable to the extent that it exceeded and exceeds the third-class rate of 56.8 cents per 100 pounds, minimum 20,000 pounds, for carload shipments, and the second-class rate of 74.5 cents per 100 pounds for less-than-carload shipments. The real issue, however, and the one issue to which practically all of the testimony offered relates, is the reasonableness of the official classification rating.

Complainant compares the rate assailed with lower rates on burlap bags, gunny bags, and cotton bags from Philadelphia to Rockford; on carded cotton and cotton blankets from Boston, Mass., to Rockford; and on boots and shoes from Boston to Chicago, Ill.; but without showing that the circumstances and conditions of the transportation are substantially the same. Nor is it shown that these articles compete with or are analogous to the unfinished hosiery involved. Complainant contends particularly, however, that cotton knit fabric in tubular form and cotton piece goods in the original piece, rated rule 25 in the official classification, which is 15 per cent less than second class, but not less than third class, are analogous to undyed and unfinished hosiery. These materials differ from unfinished hosiery in the important respect that they are shipped in original pieces. It is the trade practice to cut original pieces of tubular knit fabric and cotton piece goods into necessary shapes for the manufacture of such articles as overalls, shirts, underwear, gloves, and mittens. When this is done and after labor has been added, waste eliminated, and the value increased, the material is rated first class in the official classification. Cotton yarn used in the manufacture of complainant's hosiery is rated rule 25, but when it is manufactured into hosiery is rated first class. Leather, n. o. i. b. n., is rated fourth class in carloads and second class in less than carloads, whereas boot and shoe legs and uppers cut from such leather are rated first class, any quantity.

Defendants insist that there is a wide variety of hosiery, including unfinished hosiery, and the equally wide range in values renders

it difficult to differentiate the several varieties for the purpose of separate classification. Finished hosiery ranges in value from 75 cents per dozen to \$25 per dozen, and from \$4,000 per car to \$25,000 per car. Complainant's hosiery is valued at about \$4,500 per car. Some finished low grades are more valuable than unfinished high grades.

The average weight of the shipments involved was 14,517 pounds, only seven shipments weighing more than 20,000 pounds. Complainant states that 30 per cent of the cubical space in the car is wasted because of the shape of the bales and if an allowance of 30 per cent is made 34,000 pounds of unfinished hosiery in bales can be loaded into a standard car. Complainant desires a 20,000-pound minimum on the ground that a higher minimum would compel it to hold some shipments so long to complete loading that it would be injured. But hosiery moves almost everywhere in official classification territory, as well as in southern and western classification territories, under any-quantity rates, and no satisfactory reason is given for the substitution of a carload and less-than-carload basis. Neither is any commercial necessity for such a basis shown. *Taylor Dry Goods Co. v. M. P. Ry. Co.*, 28 I. C. C., 205.

We find that the rate attacked is not shown to have been unreasonable, and an order will be entered dismissing the complaint.

39 I. C. C.

No. 7026.
OKLAHOMA COTTONSEED CRUSHERS' ASSOCIATION
v.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
ET AL.

No. 7048.
SAME
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted December 15, 1915. Decided May 22, 1916.

Findings in original report, 35 I. C. C., 94, that the rates on cottonseed oil from Oklahoma producing points to Kansas City, Mo., and on cottonseed cake, meal, and hulls from the same producing points to points in other states are unjust, unreasonable, and unjustly discriminatory adhered to; mileage schedules of maximum rates proposed therein revised; and the revised schedules prescribed as just and reasonable maxima for the future.

J. H. Johnston and J. M. Aydelotte for complainant.

George A. Henshaw and W. V. Hardie for Corporation Commission of Oklahoma.

William H. McGuffey for Procter & Gamble Manufacturing Company.

R. D. Sangster and C. D. Dooley for Peet Brothers Manufacturing Company.

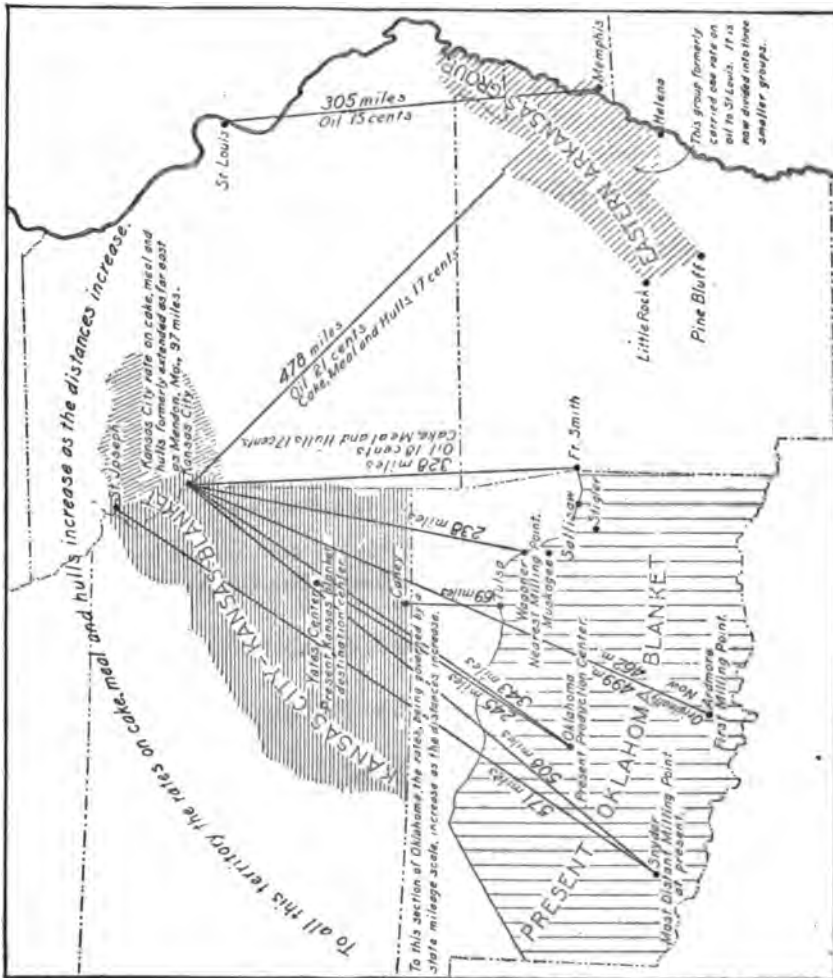
C. S. Burg, Thomas Bond, A. A. Hurd, T. J. Norton, W. F. Dickinson, Wallace T. Hughes, and F. E. Andrews for defendants.

REPORT OF THE COMMISSION ON SUPPLEMENTAL HEARING.

MEYER, *Chairman*:

At the time the original complaints in these cases were filed, there were 47 points in the state of Oklahoma producing cottonseed oil, cake, meal, and hulls. These points are situated all over the state, the minimum and maximum short-line distances therefrom to Kansas City, Mo., being 238 miles and 508 miles, respectively. The rate on cottonseed oil to Kansas City is 16 cents from Wagoner and Sallisaw, 20 cents from Muskogee and Stigler, and 25 cents per 100 pounds from the remaining 43 points. The rate on cottonseed cake, meal, and hulls from all of the 47 points to Kansas City is 17 cents per 100

pounds, which rate applies to intermediate points in Kansas. The minimum and maximum short-line distances for which the latter rate applies are 69 and 571 miles, respectively, being the short-line distances from Tulsa, Okla., to Caney, Kans., and from Snyder, Okla., to St. Joseph, Mo., respectively. The accompanying map graphically pictures the rate situation from these producing points,



and also from Memphis, Tenn., and certain Arkansas points with which the Oklahoma points compete.

In our original report, 35 I. C. C., 94, we found that the grouping of these producing points was unjust and unreasonable, and that the rates on oil to Kansas City, and on cake, meal, and hulls to points in Kansas, Missouri, Iowa, Nebraska, and to Colorado common points

and points in Colorado east thereof, were unjust, unreasonable, and unjustly discriminatory. Although convinced that these rates should no longer continue, we were "unable to formulate conclusions regarding the details of a readjustment with the desired degree of certainty and confidence." The complainants and defendants in these cases, as well as in *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 43, and 24 I. C. C., 327, which involved the same rates, had varying ideas as to the proper plan of readjustment to adopt if the existing rates were declared unlawful. The complainants insisted that, in lieu of the large group with one rate from all points in the group, smaller groups with graduated rates based on average distances should be prescribed. The defendants contended in the second *Anadarko Cotton Oil Co. Case, supra*, that, if the rates were reduced, the group should be broken up by applying a flat mileage scale. The complainants offered no convincing evidence in support of the boundaries of the proposed smaller groups, and the defendants submitted no suggestions as to the level, graduation, and application of a flat mileage scale. We decided, however, in favor of the alternative suggested by defendants and, "with the view of facilitating the final determination of the issues," prepared from the evidence of record tentative mileage schedules as the subject of a further hearing at which all parties interested would be given an opportunity to show cause why the same should not be finally prescribed. This hearing has been held, additional briefs filed, and another oral argument presented. In the light of the record as it now stands, a definite order will be made.

Before proceeding to a discussion of the various suggestions and contentions of the parties regarding the propriety and reasonableness of the proposed mileage schedules, two or three preliminary questions will be disposed of. At the original hearing complainants contended that the grouping of the points of origin was unreasonable, and considerable testimony relative thereto was introduced. Defendants take the position that—

this issue was not raised directly or indirectly by the pleadings, that testimony bearing upon it was irrelevant and inadmissible, and that the Commission fell into an error of law in enlarging the scope of these complaints beyond that raised in the pleadings.

This contention is not sustained. The complaints in these cases attacked the rates from all producing points in Oklahoma to Kansas City on cottonseed oil, and to all points in Kansas, Nebraska, Missouri, and other states on cake, meal, and hulls. As above stated, the rates on oil are not the same from all points, the rates from certain points in eastern Oklahoma being 16 cents and 20 cents, and from all other points in the state 25 cents per 100 pounds. The

rates on cake, meal, and hulls, while blanketed at a rate of 17 cents per 100 pounds from all points in Oklahoma to all points in Kansas intermediate to lower Missouri River points, were and are lower from all points on and north, and a few points south, of the main east and west line of the Chicago, Rock Island & Pacific Railway Company through Oklahoma City than from points farther south to points in southwestern Kansas, and also from points on the St. Louis & San Francisco Railroad in Oklahoma to points on the same line in southern Missouri. The answers of defendants were merely general denials. Under the pleadings the rate from every point of origin to every destination involved was in issue, and, in support of the allegation that the rates were unjust and unreasonable, testimony pointing out that the Oklahoma blanket had been developed more by adding points nearer to the destinations than by adding points farther away, and otherwise attacking the blanket adjustment, was relevant and material and therefore admissible. At the original hearings defendants made no formal objection to the introduction of testimony along this line, and no reference whatever to the matter was made in their original briefs.

It is also contended by defendants that the Commission erred in referring to certain facts and figures, not specifically stated of record, in support of its conclusion that the rates are unjust and unreasonable. At the hearing a witness for complainant described the movement of the center of production of these cottonseed commodities, introduced exhibits of short-line mileages to Kansas City and other points, showed how the construction of new lines had reduced these distances, and in other ways attempted to demonstrate that the service performed for the rates attacked had been considerably lessened in recent years. A witness for defendant stated that the rates on grain and live stock from Oklahoma to Kansas City are blanketed, and further, that the cottonseed-oil rate from Fort Smith to Kansas City had always been held down by the Kansas City Southern Railway, a line of greater earning capacity than the Oklahoma lines. The above-described testimony of complainant's witness was controverted by defendants' witnesses, and the statements of defendants' witnesses were controverted by complainant's witnesses. All we did was to settle these conflicts in the testimony by having the statements and exhibits checked against our official records, with the result that some of the statements were found to be in error and some of the exhibits incorrect. In doing this, we did not "go beyond the record"; we merely checked and verified statements and exhibits appearing in the record, as to which all parties were fully apprised and given an opportunity to contest by cross-examination or the production of evidence in explanation or rebuttal. The Commission is not confined in its consideration to the facts and figures specifically stated pertaining

to matters referred to in the record, but may consider and, in support of its conclusions, may rely upon the actual facts and figures pertaining to matters referred to in the record, as verified by the tariffs and other official documents and records which the law requires carriers to file with it. *People's Fuel & Supply Co. v. G. T. W. Ry. Co.*, 27 I. C. C., 24, 29; *Int. Com. Com. v. Louis. & Nash. R. R.*, 227 U. S., 88. In any event the supplemental hearing herein gave all parties an opportunity to present testimony with respect to all facts and figures stated in our first report.

In the second *Anadarko Cotton Oil Co. Case* we were not "satisfied that there is no substantial dissimilarity in the conditions of transportation" from Arkansas points and Oklahoma points to the destinations involved herein. Defendants therefore contend that it was error to use comparisons with Arkansas rates in support of the findings that the present rates from Oklahoma points are unreasonable and unduly prejudicial. The above expression in the second *Anadarko Cotton Oil Co. Case* had no reference to the rates on cake, meal, and hulls, but only to the rates on oil. In the instant cases, after the complainant had shown that rates from Oklahoma were higher than the rates from Arkansas and had made a prima facie showing of substantial similarity in operating conditions, it became the duty of defendants to explain this discrimination. This they did not do with respect to the rates on cake, meal, and hulls at either the original or supplemental hearings, although specific reference was made to the matter in our original report.

With respect to the rates on oil, they renewed the contentions made in the *Anadarko Cotton Oil Co. Case* that the rates from eastern Arkansas points to Kansas City were held down by the presence of certain rates to St. Louis, and that the rates from Fort Smith territory to Kansas City were held down by the Kansas City Southern Railway. Between the second decision in the *Anadarko Cotton Oil Co. Case* and the filing of the complaints herein material changes in grouping and rates transpired which did not seem to bear out the contention that the rates from eastern Arkansas points to Kansas City were held down by the rates to St. Louis. During the same period the rate from Fort Smith to Kansas City was increased, while the rate from certain points, served by defendants, then grouped with Fort Smith was not changed. In the light of these changed conditions and as a result of a more extended analysis of the old conditions, we found that the circumstances and conditions surrounding the movement of oil from Arkansas and Oklahoma points to Kansas City were not so dissimilar as to justify the present difference in rates.

At the supplemental hearing, defendants endeavored to strengthen their contention that the circumstances and conditions surrounding

the movement of oil from the two sources of supply are different and insisted that the fourth section of the act and competition of the mills for seed compelled the maintenance of the Memphis-Kansas City rate from eastern Arkansas points. They further contended that the influence of the Memphis situation extended clear across the state of Arkansas and into the northeastern corner of Oklahoma. It is not necessary to analyze this proposition in detail, as it rests upon an erroneous premise. The competition of the Mississippi River has ceased to exist on the movement of oil. We have also come to the conclusion that the competition of the Illinois Central from Memphis to St. Louis and other points does not, as a matter of law, justify the St. Louis & San Francisco Railroad in carrying a lower rate from Memphis than from its equidistant Oklahoma points to Kansas City. The extent of Kansas City's demand for cottonseed oil is not affected in any particular by the movement from Memphis to St. Louis and other points served by the Illinois Central Railroad. Oklahoma is therefore entitled to supply the Kansas City demand on as favorable transportation terms as Memphis and Arkansas. So long as the rate from Memphis to Kansas City was controlled by the Kansas City, Fort Scott & Memphis, a line with no interest in Oklahoma, no legal duty rested upon the St. Louis & San Francisco Railroad to keep its Oklahoma points on a parity with Memphis, but as the Kansas City, Fort Scott & Memphis has now become a part of the St. Louis & San Francisco system the requirement of the statute not to discriminate unjustly between the two sources of supply has been brought into full play. Competitive influences from Memphis to St. Louis would not justify that company in maintaining higher rates from points intermediate to Memphis than from Memphis to Kansas City, *In re Fourth Section Applications as to Rates on Salt*, 24 I. C. C., 192; consequently the same competitive influences can not be accepted as justifying the same line in carrying higher rates from its equidistant Oklahoma points than from Memphis to Kansas City.

In this connection it is interesting to note that at the supplemental hearing a witness for the St. Louis & San Francisco Railroad stated that the rates from a great many Arkansas points are the result of "sentiment," and that if the Commission finally decided that the present adjustment unjustly discriminates against Oklahoma the Arkansas rates would be increased. A witness for the Missouri, Kansas & Texas Railway stated that he knew of no reason why the same mileage basis should not apply from Fort Smith and Oklahoma points. It was further admitted that the Kansas City Southern would increase the rate from Fort Smith to Kansas City, "provided the same adjustment was spread to competitive Arkansas points." As the competitive Arkansas points referred to are served

by the defendants, our previously expressed opinion that the Kansas City Southern Railway does not control the Fort Smith situation is confirmed. It is rather significant that this line, although a defendant in these cases, has not been represented at any stage of the proceedings.

Since the supplemental hearing defendants have filed statements tending to show that the movement of cottonseed oil from Arkansas points to Kansas City is relatively small as compared with that from Oklahoma points. Complainant attacks these statements as incomplete and inconclusive. With respect to these statements it is sufficient to say that, conceding that the relative movement is as defendants represent, it presents no reason why the rates paid by the Oklahoma complainants should not be fair and reasonable as compared with those paid by their Arkansas competitors.

Many other contentions were made by defendants in support of the reasonableness of the present rates. Complainant has also presented additional exhibits and testimony in support of its position. This new evidence has been fully analyzed and the old record reviewed, and our previous conclusion that the present rates and grouping on both oil and cake, meal and hulls, are unjust, unreasonable, and unjustly discriminatory, is adhered to.

The next question to be considered is the propriety of mileage schedules as the basis of readjustment. Complainant again proposes that the present large group be divided into several smaller groups with varying rates graduated according to average distances. The history of these proceedings shows that complainant has submitted no less than a half dozen different regroupings, no two of which are alike, thus illustrating the practical difficulty of drawing the boundary lines of smaller groups. The only argument made in favor of several smaller groups as against a mileage scale is that the former would be more convenient in figuring delivered prices, but as the rates on cotton seed, the raw material of the commodities here in question, to these Oklahoma milling points are on a mileage basis, and the average haul of the seed is approximately 90 miles, this contention loses weight. Defendants renew their contention made in the *Anadarko Cotton Oil Co. Cases*, that if the present rates and grouping are not retained flat mileage schedules should be prescribed. The mileage basis is the best plan, and it will be adopted.

The reasonableness of the schedules tentatively prescribed in our first report will now be considered. With respect to the cake, meal, and hulls schedule, complainants contend (1) that it should be extended to 1,500 miles so as to take in points in Minnesota, North and South Dakota, Montana, and Wyoming, and (2) that the rates on hulls should be lower than on cake and meal; while defendants contend generally (3) that the whole schedule is too low.

(1) Defendants make no objection to complainant's request that this schedule be extended to 1,500 miles. The original complaint in Docket No. 7048 attacked the rates on these commodities from Oklahoma to all points carried in agent Leland's I. C. C. No. 864, which tariff publishes rates to points in Minnesota, North and South Dakota, Montana, and Wyoming. A representative of the National Wool Growers Association appeared at the hearing and testified that the sheep raisers of the northwest had begun to use cottonseed cake and meal as feed, and that already a small movement from Oklahoma had developed; that a much larger movement would develop if just and reasonable rates were prescribed; and that the average car loading to that territory is about 50,000 pounds. The average loading to the other points in issue is between 35,000 and 40,000 pounds, and the minimum carload weight to all points is 30,000 pounds.

(2) Complainants represent that the rates on hulls should be 60 per cent of the rates on cake and meal. The average value of hulls is much less than that of cake and meal, but the average loading of cake and meal is much heavier than that of hulls. Large quantities of the hulls are fed to live stock at and near the points of origin, with the result that the movement to interstate points is insignificant. For a long time the Atchison, Topeka & Santa Fe Railway had in effect a rate of 12.5 cents, minimum weight 24,000 pounds, on hulls from its Oklahoma mill points to points in Kansas taking 17 cents, minimum weight 30,000 pounds, on cake and meal, but no movement developed, so the rate was canceled. Most of the tariffs carry lower rates on hulls than on cake and meal, but the percentage relation of the rates is far from uniform.

(3) The contention of defendants that the proposed mileage rates on cake, meal, and hulls are too low is based on the proposition that rates on commodities from one producing state or section to another producing state or section are generally made low in order to induce a movement, that the proposed schedule approximates schedules in effect between cotton-producing states, and that therefore it is too low. The premises of this proposition are not supported by the record. In the following table various mileage scales applying between points in cotton-producing states, between points in nonproducing states, between producing states, between nonproducing states, and between producing and nonproducing states are shown. For comparative purposes the tentative schedule is also shown. As some of the schedules run out at 400 miles, only the rates up to that distance are indicated.

Rates.	100 miles.	200 miles.	300 miles.	400 miles.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Oklahoma intrastate.....	10.2	13.9	16.9	18.4
Texas intrastate.....	10.0	14.0	17.5	17.5
Missouri intrastate.....	8.25	12.0	13.5	14.0
Kansas intrastate.....	7.0	11.0	12.25	14.0
Oklahoma-Missouri interstate.....	9.5	13.25	15.5	18.5
Nebraska-Kansas-Missouri interstate.....	8.5	12.25	14.5	17.0
Oklahoma-Texas interstate.....	10.0	14.0	18.0	23.0
Oklahoma-New Mexico interstate.....	10.0	14.0	19.0	21.0
Arkansas-Louisiana interstate.....	8.5	11.0	13.0	15.0
Tentative I. C. C. scale.....	9.5	14.5	16.5	18.5

The lowest rates shown in the above table are between points in Kansas and between points in Missouri, nonproducing states. The highest rates are from Oklahoma, a producing state, to New Mexico, a nonproducing state, and between Oklahoma and Texas, both producing states. Defendants stated that the Oklahoma-Texas rates were prescribed in *Cottonseed Products from Oklahoma City to Texas Points*, 25 I. C. C., 237, but reference to the decision in that case shows that the carriers were endeavoring to increase these rates, that the increased rates were not found reasonable, and that respondents were permitted to restore the old rates "without prejudice to specific attack aside from this proceeding."

In our original report, we found that cottonseed cake, meal, and hulls compete with corn for live-stock feeding purposes. In the territory involved herein, defendants apply corn rates on numerous stock foods, such as linseed meal, alfalfa meal, brewers' meal, corn-cob meal, corn-germ meal, gluten meal, and, in some instances, also on cottonseed cake and meal. The minimum weights on the other stock foods enumerated approximate those on cottonseed cake and meal. The rates on cottonseed cake and meal from Oklahoma to a large territory east and north of Kansas City are constructed by adding to the rate of 17 cents per 100 pounds from Oklahoma to Kansas City the proportional rates on corn from Kansas City to destination. For these and other reasons we took as a starting basis for the tentative schedule on cottonseed cake, meal, and hulls a composite of several interstate mileage schedules of defendants applying on corn in the same general territory.

As the tentative schedule now stands, it produces higher rates on cottonseed cake, meal, and hulls than the defendants voluntarily maintain from Arkansas to the same territory under circumstances and conditions which we have found to be substantially similar. The average short-line distance from the eastern Arkansas group to Kansas City is 478 miles, and the present rate 17 cents. For the same distance under the schedule the rate is 20.5 cents. During the year ended August 31, 1915, the average loading of cake and meal of all the mills of Oklahoma City, the present center of pro-

duction, was 36,440 pounds; the average haul to all points involved in this case was 365 miles, and to all points in Kansas taking 17 cents, 251 miles. Under the schedule that traffic would have produced 18 cents per car-mile to all points, and 23.2 cents per car-mile to the Kansas blanket points. In *Oklahoma Traffic Asso. v. A. & S. Ry. Co.*, 36 I. C. C., 329, 337, we found that—

during the year ended June 30, 1914, the Santa Fe system earned 16.3 cents per car-mile for an average haul of 274 miles on all freight, the Rock Island 13.7 cents for an average haul of 234 miles, the St. Louis & San Francisco 17.5 cents for an average haul of 162 miles, the Missouri, Kansas & Texas 16.8 cents for an average haul of 203 miles.

During the same period, on the last-named line, the average loading of cottonseed cake, meal, and hulls was 39,100 pounds, the average haul 231 miles, the average car-mile revenue 16.96 cents.

If the tentative schedule had been applied to all the shipments made by the Oklahoma City mills to the territory involved during the year ended August 31, 1915, the total revenue received by all lines from the traffic would have been reduced \$3,738.34. Oklahoma City has more short lines running in all directions than any other point in the state, and consequently the result of the application of the schedule to shipments from that point can not be considered typical of the state as a whole. If the schedule had been applied to all the shipments made by the mill at Chickasha for the year ended September 1, 1915, it would have effected increases to 616 destinations, reductions to 129 destinations, and netted the carriers a total increase in revenue of \$4,905.75.

With respect to the proposed schedule on cottonseed oil complainant contends (1) that the rates for distances beyond 350 miles are relatively too high in that the gradation is greater than for the lesser distances; while defendants contend that the schedule is too low as compared (2) with the schedule on cake, meal, and hulls, (3) with rates on other commodities, (4) considering certain extra costs incident to the traffic, and further, because (5) it will probably entail reductions in rates to other markets.

(1) While not specifically explained in our original report, the greater gradation in rates on oil after passing 350 miles was based on statements made by a witness for the Chicago, Rock Island & Pacific Railway that the density of traffic in southern Oklahoma was less than in the northern half of the state. A more critical analysis of an exhibit filed by this defendant discloses that, while the density of traffic on its main line south of El Reno is not as heavy as that north thereof, its branch lines south of that point average up better than those north thereof. Most of the milling points of this defendant are located on branch lines, so that its general situation is about as favorable in the southern as in the northern part of the state. A

witness for the Atchison, Topeka & Santa Fe Railway admitted at the supplemental hearing that the gradation should be no greater on that line south of Oklahoma City than north thereof. The basis suggested by defendants for constructing the schedule on oil, viz, "spotting" the present rate of 25 cents at Oklahoma City and grading down for shorter and up for greater distances, contemplates the same gradation in rates throughout the scale.

(2) Under the proposed schedules, the rates on oil range from one-half cent to $4\frac{1}{2}$ cents higher than the rates on cake, meal, or hulls. The value of cottonseed oil per ton is about four times that of cottonseed cake and meal. Cottonseed oil moves in tank cars which weigh more and produce a greater percentage of empty mileage than ordinary box cars in which the cake and meal are loaded. On the other hand, the average loading of the oil is between 55,000 and 60,000 pounds, and of the cake and meal between 35,000 and 40,000 pounds. The loss and damage claims presented on oil are less than those on cake and meal. The percentage of main-line haul is very much greater on oil to the single destination Kansas City than on cake and meal to the hundreds of destinations involved in Docket No. 7026. Approximately 75 per cent of the oil produced in Oklahoma is shipped to Kansas City on the main line of defendants, while the cake and meal is shipped largely to branch-line points.

(3) Many comparisons between the proposed rates on oil and existing rates on other commodities were submitted by defendants, but with the exception of petroleum and its products the volume of the movement of the other commodities between Oklahoma and Kansas City is not commensurate with that on cottonseed oil. In *Midcontinent Oil Rates*, 36 I. C. C., 109, we prescribed a rate of 15 cents per 100 pounds on petroleum and its products, such as naphtha, kerosene, and other refined oils, from Oklahoma refining points to Kansas City, an average distance of 251 miles, and a rate of 20 cents on the same commodities from Kansas and Oklahoma refining points to St. Louis, an average distance of 412 miles. These distances are the averages of the shortest workable routes from each refining point made up, in many instances, of two and three line hauls. The tentative rates on cottonseed oil for the same distances are 16.5 and 21 cents, respectively, for one-line hauls, and 17.5 and 22 cents, respectively, for two-line hauls. While the value of cottonseed oil is much greater than that of petroleum and its products, the average loading of cottonseed oil is between 55,000 and 60,000 pounds and that of petroleum and its products about 50,000 pounds.

(4) Because cottonseed-oil tank cars are not loaded with any other commodity, it is claimed that the empty mileage is 100 per cent of the loaded mileage. No evidence was introduced in support of this conclusion. A certain car may move loaded from a point in southern

Oklahoma to Kansas City, thence empty to a point in northern Oklahoma, thence loaded to Galveston, Tex., thence empty to a milling point in Texas, and so on, until at the close of the shipping season its record of total empty mileage may fall far short of 100 per cent of its loaded mileage.

The carriers pay a rental of three-fourths of a cent a mile for the use of the tank cars both loaded and empty, and this allowance is referred to as an extra cost. But no evidence was introduced to show the average cost per mile of these cars, or of box cars, in interest, taxes, maintenance, and depreciation, so we are without any basis for finding what percentage, if any, of this allowance is in fact an extra cost. These tank cars remain idle on the sidetracks from six to nine months every year, but the carriers are not required to pay any per diem or interest on the investment.

Some claim is made that cottonseed oil is given an expedited service. Two witnesses testified on this question. One referred to packers' tank cars, and the other stated that the average daily movement of box cars was 25.8 miles and of tank cars in cottonseed-oil service 40.8 miles. The movement of packers' tank cars is not involved in this case, and the fact that the average daily movement of cottonseed-oil tank cars is greater than that of box cars does not necessarily prove that the tank cars are given an expedited service.

Transit is permitted on cottonseed oil without extra charge, and in some instances out of line and back hauls are made in order to secure this service. The latter is referred to as entailing additional expense. The rates prescribed herein are for through movements, and, being on a distance basis, the shortest distance between any two points will be controlling. Transit is a stop-over service performed at an intermediate point in the general direction of the ultimate destination, and does not properly include an out of line or back haul in order to include some point in a different direction. If defendants offer transit service on the rates herein prescribed, a reasonable charge for such service may be made. *In re Transportation of Wool, Hides, and Pelts*, 23 I. C. C., 151, 174.

(5) It is also claimed that any reduction in the rates on oil from Oklahoma points to Kansas City will entail a proportionate reduction on oil from the same points to Oklahoma City, Okla., Wichita and Coffeyville, Kans., and probably other centers, and also on seed from the same points to Kansas City. The oil shipped to Oklahoma City is refined in transit and charges ultimately collected on basis of the through rate from point of origin of the crude oil to the destination of the refined oil or other product, so that the measure of the local rates on crude oil to this refining point is of little or no consequence. Transit is also permitted at Wichita and Coffeyville, although the record indicates that there is no movement to the latter

point. The record also shows that there is little or no movement of cotton seed to Kansas City, and, further, that the present rates on the seed are in many instances higher than on the oil. In any event, the possibility that some readjustment will have to be made in other rates is no reason why just and reasonable rates should not be prescribed between the points and on the commodities involved in this case.

In constructing the tentative schedule on oil the rate of 16 cents from Wagoner to Kansas City, a distance of 238 miles, was taken as the rate for 250 miles and less. The rate of 18 cents from Fort Smith to Kansas City, a distance of 328 miles, was taken as the rate for 350 and over 325 miles. The rates for the intermediate distances were increased one-half cent every 25 miles, and for the greater distances 1 cent every 25 miles. As the schedule now stands it will produce higher rates than the defendants maintain generally from Arkansas points to Kansas City. The average distance from the eastern Arkansas group to Kansas City is 478 miles and the present rate 21 cents; the rate for this distance under the schedule is 24 cents. During the year ended June 30, 1914, the Missouri, Kansas & Texas Railway earned on cottonseed oil 26.18 cents per car-mile for an average haul of 254.9 miles. Using 55,000 pounds as the average loading, the schedule will produce car-mile earnings of 35.6 cents for 255 miles; 28.8 cents for 343 miles, the short-line distance from Oklahoma City to Kansas City; and 26 cents for 525 miles, or practically the same earnings but double the average haul as the above-named defendant secured from this traffic for the period indicated. The average distance via the four principal defendants from Oklahoma City to Kansas City is 375 miles. The rate of 18 cents, the schedule rate for the short-line distance of 343 miles, will produce average car-mile earnings of 26.4 cents.

In our original report it was provided that to the schedules proposed, 1 cent may be added in each of the following instances: On shipments transported over two or more lines not under the same management or control; on shipments originating at points west of the St. Louis & San Francisco Railroad from Blackwell to Enid, or west of the main line of the Chicago, Rock Island & Pacific Railway from Enid to Terral; and on shipments destined to points in Colorado. Complainant contends (1) that no arbitrary should be added in the second instance referred to, and the defendants represent (2) that the arbitrary is too low for hauls over two or more lines.

(1) The conclusion to add the arbitrary of 1 cent on traffic originating west of the main north and south line of the Chicago, Rock Island & Pacific Railway was based on testimony of a witness for this defendant that most of the lines traversing that territory are

either branch lines or recently constructed short lines on which the traffic density is comparatively light. Complainants now point out that there are quite as many branch lines and new short lines in the eastern two-thirds as in the western third of the state, and, further, that the traffic density on the branch lines of the above-named defendant in the western section does not average any lighter than on the branch lines of the same defendant in the eastern section of the state. This defendant has recently extended the rate of 25 cents on oil to Kansas City so as to apply from Shamrock, Tex., located on its east and west line running through the western third of Oklahoma. The distance from this point to Kansas City is 532 miles; the schedule rate for this distance, with no arbitrary added, is 26 cents. It is also significant that none of the bases proposed by defendants on oil contemplate the addition of any arbitrary on traffic originating in the western third of the state. Complainant also points out that to add an arbitrary to the rates on the outbound products of this particular territory would place a premium upon taking seed out of that section and milling it at points from which the arbitrary would not apply. This would result in the arbitrary becoming an injury rather than a benefit to the lines in that section, as they would be cut off with a short haul on the seed while their competitors to the east would secure the long haul on the higher rated products.

(2) The contention of defendants that the proposed arbitrary of 1 cent for hauls over two or more lines is too low is based largely on a comparison with the arbitraries prescribed by the Corporation Commission of Oklahoma for intrastate hauls over two or more lines. These arbitraries are 3 cents for two-line hauls, 5 cents for three-line hauls, and 7 cents for hauls over more than three lines. It appears, however, that the Corporation Commission of Oklahoma prescribed high arbitraries for the specific purpose of discouraging shipments over two or more lines.

In lieu of the arbitrary on traffic originating in western Oklahoma, complainant suggests that the application of the arbitrary on shipments destined to points in Colorado be extended so as to apply to certain additional territory in the northwest, where the density of traffic is comparatively light, that the arbitrary for hauls over two or more lines be increased, and also that the schedule on oil be rearranged so as to make the gradation uniform throughout the scale.

Upon consideration of the whole record, we find and conclude that the following schedules of maximum rates on the commodities here involved will be just and reasonable for the future:

OKLAHOMA COTTONSEED CRUSHERS' ASSO. V. M., K. & T. RY. CO. 511

Cottonseed oil in carloads from Oklahoma producing points to Kansas City, Mo.

Miles.	Rates per 100 pounds.	Miles.	Rates per 100 pounds.
	<i>Cents.</i>		<i>Cents.</i>
250 and less.....	18.0	450 and over 425.....	22.0
275 and over 250.....	18.5	475 and over 450.....	22.5
300 and over 275.....	19.0	500 and over 475.....	23.0
325 and over 300.....	19.5	525 and over 500.....	23.5
350 and over 325.....	20.0	550 and over 525.....	24.0
375 and over 350.....	20.5	575 and over 550.....	24.5
400 and over 375.....	21.0	600 and over 575.....	25.0
425 and over 400.....	21.5		

Two cents per 100 pounds may be added to the rates on shipments transported over two or more lines not under the same management or control.

Cottonseed cake, meal, and hulls, in carloads, from Oklahoma producing points to points in Kansas, Missouri, Iowa, Nebraska, Minnesota, North Dakota, South Dakota, Montana, Wyoming, and to Colorado common points and points in Colorado east thereof.

Miles.	Rates per 100 pounds.	Miles.	Rates ¹ per 100 pounds.
	<i>Cents.</i>		<i>Cents.</i>
70 and over 60.....	8.0	500 and over 475.....	20.5
80 and over 70.....	8.5	525 and over 500.....	21.0
90 and over 80.....	9.0	550 and over 525.....	21.5
100 and over 90.....	9.5	575 and over 550.....	22.0
110 and over 100.....	10.0	600 and over 575.....	22.5
120 and over 110.....	10.5	625 and over 600.....	23.0
130 and over 120.....	11.0	650 and over 625.....	23.5
140 and over 130.....	11.5	675 and over 650.....	24.0
150 and over 140.....	12.0	700 and over 675.....	24.5
160 and over 150.....	12.5	750 and over 700.....	25.0
170 and over 160.....	13.0	800 and over 750.....	25.5
180 and over 170.....	13.5	850 and over 800.....	26.0
190 and over 180.....	14.0	900 and over 850.....	26.5
200 and over 190.....	14.5	950 and over 900.....	27.0
225 and over 200.....	15.0	1,000 and over 950.....	27.5
250 and over 225.....	15.5	1,050 and over 1,000.....	28.0
275 and over 250.....	16.0	1,100 and over 1,050.....	28.5
300 and over 275.....	16.5	1,150 and over 1,100.....	29.0
325 and over 300.....	17.0	1,200 and over 1,150.....	29.5
350 and over 325.....	17.5	1,250 and over 1,200.....	30.0
375 and over 350.....	18.0	1,300 and over 1,250.....	30.5
400 and over 375.....	18.5	1,350 and over 1,300.....	31.0
425 and over 400.....	19.0	1,400 and over 1,350.....	31.5
450 and over 425.....	19.5	1,450 and over 1,400.....	32.0
475 and over 450.....	20.0	1,500 and over 1,450.....	32.5

¹ Not exceeding 2 cents per 100 pounds may be added to these rates on shipments transported over two or more lines not under the same management or control. Not exceeding 1 cent per 100 pounds may be added to these rates on shipments destined to points in Montana; Wyoming; Colorado; Nebraska, north and west of the main line of the Union Pacific Railroad from Julesburg, Colo., to Columbus, Nebr., thence north to Norfolk, Nebr., thence north via the Chicago & North Western Railway to Niobrara, Nebr.; South Dakota, west of the Missouri River; and North Dakota, west and south of the Missouri River.

Complainants do not ask for the institution of any through routes not authorized by the application of the present rates, consequently the above schedules of rates will be prescribed only via the present routes participated in by defendants.

Fourth Section Applications Nos. 626 and 641 were set for hearing in connection with Docket No. 7026. Since the hearing some of the departures from the provisions of the fourth section have been voluntarily eliminated by the defendants, and the remaining departures will be either eliminated or modified by the publication of the rates herein prescribed. The departures which will be modified by the rates herein prescribed are brought about by indirect lines carrying higher rates from intermediate points than from junction points with direct lines to Kansas City. It is, of course, not known to what extent the indirect lines may desire to meet the rates of the direct lines at junction points, and to depart from the long-and-short-haul rule of the fourth section at intermediate points, under the rates herein prescribed. Applications for relief by such indirect lines, if presented within 30 days from the date of service of this report, will be considered and such relief granted as the circumstances may justify. Generally speaking, relief will be granted where the distance via the indirect line or route is more than 15 per cent greater than the distance via the direct line or route.

An appropriate order will be entered.

89 I. C. C.

No. 8155.
ORGILL BROTHERS & COMPANY
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL.

Submitted January 11, 1916. Decided May 19, 1916.

Rate charged for the transportation of cast-iron dog irons in carloads from Rome, Ga., to Memphis, Tenn., found to have been unreasonable. Reparation awarded.

James J. Nolan for complainant.

Frank W. Gwathmey for Nashville, Chattanooga & St. Louis Railway and Western & Atlantic Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged, among other things, in the purchase and sale of hardware at Memphis, Tenn. By complaint, filed July 12, 1915, it alleges that the rate of 55 cents per 100 pounds, minimum 24,000 pounds, charged by defendants for the transportation of a carload of cast-iron dog irons, shipped September 15, 1913, from Rome, Ga., to Memphis, was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of 29 cents. Reparation is asked.

The shipment moved: Central of Georgia Railway, which is not made a party defendant, to Chattanooga, Tenn.; Nashville, Chattanooga & St. Louis Railway thence to destination. The complaint is against the Western & Atlantic Railroad Company, which did not participate in the transportation, and the Nashville, Chattanooga & St. Louis Railway. Charges were collected in the sum of \$132 at the joint fourth-class rate of 55 cents per 100 pounds, minimum 24,000 pounds. A joint rate of 29 cents per 100 pounds, minimum 24,000 pounds, was maintained by the Central of Georgia in connection with the Nashville, Chattanooga & St. Louis Railway, from Rome to Memphis on grates, grate brackets, frames, and fenders, in separate or mixed carloads. Complainant contends and defendants admit that no higher rate should be applied on dog irons than on grates and grate fixtures.

Identical rates applied on all of these articles from Chattanooga, Tenn., Rome, Dalton, and Atlanta, Ga., to lower Mississippi River crossings and from Chattanooga to Carolina territory. Effective January 21, 1916, a joint rate of 29 cents per 100 pounds, minimum

24,000 pounds, was established on dog irons from Rome to Memphis, applicable over defendants' lines and also over the Central of Georgia Railway in connection with the Nashville, Chattanooga & St. Louis Railway.

Defendants rely upon the improper joinder of parties defendant, the nonjoinder of the Central of Georgia, and the barring of the claim against the Central of Georgia by the statute of limitations.

We adhere to the view that where an unreasonable joint rate has been collected the liability of the parties to such action is joint and several, and that reparation may be required of the roads which participated in the traffic, even though other roads which participated are not made parties defendant. *Webster Grocer Co. v. C. & N. W. Ry. Co.*, 21 I. C. C., 20.

We find that the rate assailed is not shown to have been unjustly discriminatory, but that it was unreasonable to the extent that it exceeded a rate of 29 cents per 100 pounds, minimum 24,000 pounds.

Complainant originally paid charges on the shipment in the sum of \$91.20 at a rate of 38 cents. The shipper ultimately bore these charges, but on November 15, 1915, assigned such interest as it had in the claim to complainant. The interest assigned had, however, been barred by the statute of limitations before the date of assignment. Complainant paid and bore charges on the shipment in the sum of \$40.80, which sum represented the difference between the charges borne by the shipper and charges at the fourth-class rate of 55 cents subsequently collected from complainant.

Complainant has been damaged to the extent of the charges which it bore and is entitled to reparation in the sum of \$40.80, with interest from June 28, 1915.

An order requiring the Nashville, Chattanooga & St. Louis Railway to make reparation will be entered, but the Central of Georgia may participate in the refund.

39 I. C. C.

No. 7126.
E. F. SANGUINETTI
v.
UNION PACIFIC RAILROAD COMPANY ET AL.

Submitted December 3, 1915. Decided May 19, 1916.

Union Pacific Railroad Company found to have misrouted a carload of potatoes transported from Masters, Colo., to Yuma, Ariz. Reparation awarded.

G. M. Stephen for complainant.

L. T. Wilcox for Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Denver & Rio Grande Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

The complaint in this case alleges that defendants misrouted a carload of potatoes shipped from Masters, Colo., to Yuma, Ariz., with the result that unreasonable charges were collected. We dismissed the complaint for want of evidence. Rehearing was asked by complainant and granted. The single question now presented is whether or not the consignor routed the shipment.

The evidence originally adduced by complainant is supplemented by a paid freight bill and a copy of a bill of lading corresponding with the allegations of the complaint relative to the shipment. It moved over the Union Pacific Railroad to La Salle, where it was diverted to complainant at Yuma over the Union Pacific Railroad from La Salle to Ogden, Utah, and the line of the Southern Pacific Company beyond Ogden through Los Angeles, and charges were collected at a rate of \$1.04 per 100 pounds. No routing instructions appear on the bill of lading, and defendants state that they are unable to locate any record that the shipper directed routing. It was, therefore, the duty of the initial carrier to forward the shipment over that reasonably available route by which the lowest charges could be secured.

Defendants objected at the rehearing that the claim was barred by the statute of limitation, because no violation of the act was alleged when the claim was presented to the Commission informally. The objection had not been taken before. The fact is, however, that within two years after the cause of action accrued we received from complainant's attorney for filing a letter, with which was inclosed a

statement claiming overcharge in the amount set forth in the formal petition subsequently filed, which showed the commodity and its weight, the points of origin and destination, and the car number and initials. The details thus furnished agree with the freight bill now offered in evidence by complainant, and we adhere to our former finding that the "claim was presented informally" to the Commission within two years after the cause of action accrued.

If the shipment had moved over the Union Pacific Railroad to Denver, Colo., thence over the Atchison, Topeka & Santa Fe Railway or the Rock Island lines to El Paso, Tex., or Deming, N. Mex., and thence over the Southern Pacific the charges would have been based on a joint through rate of 75 cents per 100 pounds.

We find that the shipment was misrouted by the Union Pacific Railroad Company; that complainant has been damaged thereby to the extent of the difference between the charges paid and those which would have accrued at a rate of 75 cents per 100 pounds, and that he is entitled to reparation from the Union Pacific Railroad Company in the sum of \$92.53, with interest from March 27, 1911. An order will be entered accordingly.

39 I. C. C.

No. 6995.
F. W. LUCKE & COMPANY
v.
WABASH RAILROAD COMPANY ET AL.

Submitted November 18, 1914. Decided May 22, 1916.

Switching charges in excess of the line-haul charges on brick from Attica, Ind., to Harvey, Ill., found to have been unlawfully collected.

G. M. Stephen for complainant.

N. S. Brown for Wabash Railroad Company and its receiver.

P. T. Finnegan for Baltimore & Ohio Chicago Terminal Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is F. W. Lucke, engaged in buying and selling paving brick at Chicago, Ill., under the trade name of F. W. Lucke & Company. By complaint, filed June 10, 1914, he alleges that the rate charged by defendants for the transportation of paving brick in carloads from Attica, Ind., to Harvey, Ill., between November 15 and December 3, 1913, was unreasonable and unjustly discriminatory. Reparation is asked. An unreported report and order issued in this case on June 2, 1915, was, by order of July 12, 1915, rescinded.

The shipments, 40 in number, moved over the Wabash Railroad from Attica to Chicago. From Chicago 23 were switched by the belt line and the Illinois Central Railroad to Harvey at a switching charge in addition to the line-haul charge of \$3.75 per car plus 1 cent per 100 pounds; 17 by the Baltimore & Ohio Chicago Terminal Railroad at a switching charge of 1 cent per 100 pounds. The real question presented is whether defendants should have assessed the switching charges on this traffic in addition to the rate to Chicago.

The Wabash Company's tariff I. C. C. No. 2936, effective January 1, 1912, governed by the so-called Lowrey tariffs, names a rate of 80 cents per net ton on paving brick from Attica to Chicago, but no specific rate from Attica to Harvey. Lowrey's tariff I. C. C. No. 5, effective August 1, 1911, and succeeding issues to and including Lowrey's I. C. C. No. 17, effective January 12, 1913, and during the period in question, name Harvey as a point within the Chicago district and provide that when the rate to Chicago is 2½ cents per

100 pounds or higher and the charges are \$15 per car or more, the Chicago rate will apply to Harvey. In supplement No. 7 to Wabash tariff I. C. C. No. 2936, effective September 25, 1912, the 80-cent rate was reissued. In connection with this rate, which was brought forward in succeeding issues in effect during the period of movement, two reference marks are shown, one indicating an increase and the other referring to note in the original tariff, which reads:

Wabash will not absorb to exceed 20 cents per net ton of 2,000 pounds.

Complainant contends that the only lawful rate applicable to shipments of brick from Attica to Harvey was 80 cents per net ton, for the reason that the Lowrey tariff provided for the application of the Chicago rate to Harvey, and that supplement No. 7 to Wabash tariff I. C. C. No. 2936 is void because ambiguous and not specific and therefore in violation of that part of rule 64 of the Commission's Tariff Circular No. 18-A, which reads:

The intent is that tariffs shall state in specific, clear, and unambiguous terms the rates, fares, and their application.

In support of this contention complainant points out that the provision limiting the amount to be absorbed fails to designate the character of the absorption, that is, whether of switching or other charges; that it does not specify whether it applies at Attica, Chicago, Harvey, or at some intermediate point; and that in any event it is merely a declaration of a modified basis of settlement between the carriers which does not and can not affect the stated net charge to the shipper. While there is some merit in complainant's contention of ambiguity, we are not prepared to condemn the tariff solely on that ground.

The Lowrey publication, while primarily a tariff of terminal regulations, is effective as to charges on through shipments to the full extent that it is by proper reference made a part of a tariff naming rates applicable to such shipments. The Wabash tariff naming the rate to Chicago states a maximum absorption which will be made out of the rate, but makes no change in the rate itself. While it may have been the intention of the Wabash to limit the absorption by it of switching charges from Chicago to Harvey to an amount not in excess of 20 cents a ton, and to require shipper or consignee to pay the remainder of the switching charges, the tariff did not accomplish that purpose. Tariffs are to be interpreted according to the reasonable construction of the language; the intention of the framers and the practices of the carriers do not control when they are at variance with the proper construction of the terms employed in the tariff. The Wabash Railroad provides by exceptions published in Lowrey's tariff that the rate bases, rules, and regulations embodied in the tariff

will not apply on coal and coke inbound, except charcoal, nor upon grain inbound, nor upon live stock to and from territory B. If it desired to make a similar exception as to brick moving from Attica no reason appears why it could not and should not have been done in the same manner. The limitation as to absorptions contained in the Wabash tariff can not be held to have affected the rate to be paid by the shipper or consignee as specified in the Wabash tariff in connection with the Lowrey tariff to which it referred. If it be argued that the limitation stated in the Wabash tariff was a limitation upon the division of the earnings as between the Wabash and its connections, it would seem to be a sufficient answer to point out that that would mean that the roads that performed the switching service were to absorb part of their own charges, for which there was and is no tariff authority.

Upon all of the facts of record we find that the switching charges were unlawfully collected; that complainant made the shipments described in accordance with the foregoing statement of facts and paid and bore the charges thereon; that complainant has been damaged in the amount of the switching charges unlawfully collected and is entitled to reparation with interest. Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, points of origin and destination, route, weight, car number and initials, rate and switching charges applied, amount of freight and switching charges paid, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants we will consider issuing an order awarding reparation.

Complainant also calls attention to one shipment in Wabash car 67271 upon which charges were collected based on a weight of 83,700 pounds, whereas the actual weight was 63,700 pounds. The expense bill covering this shipment was not filed of record. Defendants will be expected to examine their records as to this car and if it develops that an overcharge was made certify the amount thereof to the Commission in connection with the above-mentioned verified statement.

INVESTIGATION AND SUSPENSION DOCKET No. 740.
COAL TO MISSOURI STATIONS.

Submitted May 17, 1916. Decided May 24, 1916.

Proposed increased rates on bituminous coal in carloads from mines on the Southern Railway in Illinois and Indiana to stations on the Chicago & Alton Railroad in Missouri have not been justified, and schedules under suspension ordered canceled.

Fred H. Behring for Southern Railway Company.

R. W. Ropiequet for Southern Coal, Coke & Mining Company.

W. A. Holley for Chicago, Burlington & Quincy Railroad Company.

C. E. Warner for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company and B. F. Bush, receiver thereof.

John A. Sargent and *E. J. Knickerbocker* for Southwestern Interstate Coal Operators' Association.

REPORT OF THE COMMISSION.

By THE COMMISSION:

By schedules set forth opposite the stations indexed Nos. 530 to 539, inclusive, 541, 542, and 543, and 548 to 576, inclusive, in a tariff designated Southern Railway Company, St. Louis-Louisville divisions, supplement No. 5 to I. C. C. No. C-1626, filed to take effect November 15, 1915, respondents Southern Railway and Chicago & Alton Railroad proposed to increase their joint rates on bituminous coal in carloads from mines on the Southern Railway in the Belleville district of Illinois and in the southern part of Indiana to stations on the Chicago & Alton Railroad west of Mexico, Mo., to and including Kansas City, Mo. Generally speaking, the present rates from the Southern's Belleville district mines range from \$1.30 per net ton to \$1.90 per net ton and the proposed rates, from \$1.60 to \$2.15. The Southern Railway, hereinafter called the Southern, maintains rates from its Indiana mines 25 cents over the rates from its Belleville mines and changes in the latter automatically effect corresponding changes in the former. Upon protest by the Southern Coal, Coke & Mining Company, of St. Louis, Mo., the schedules were suspended until March 14, 1916, and later until September 14, 1916. The Chicago, Burlington & Quincy Railroad, the Missouri Pacific Railway,

the St. Louis, Iron Mountain & Southern Railway, and the Southwestern Interstate Coal Operators' Association intervened at the hearing.

The Belleville district extends for some distance north, east, and south of East St. Louis, Ill., as shown by the diagram in *The Illinois Coal Cases*, 32 I. C. C., 659, 663. The producing points herein involved are located along the St. Louis-Louisville division of the Southern in the lower part of that district. The northern section of the Belleville district overlaps the southern section of the Springfield group. Kansas City may be taken as illustrative of the destinations involved. The rate from East St. Louis to Kansas City is \$1.90 per ton. The Chicago & Alton and Wabash both serve mines in that portion of the Springfield group which is overlapped by the Belleville group and maintain the East St. Louis rates from these mines to points on their lines in Missouri. The Toledo, St. Louis & Western Railroad, hereinafter called the Clover Leaf, does not extend west of East St. Louis. It serves mines at Coffeen, Panama, Sorrento, and Edwardsville, Ill., which are in the territory common to both the Belleville and Springfield groups and maintains the East St. Louis rates from these points to points on the Chicago & Alton in Missouri.

Prior to July 22, 1915, rates from mines on the Southern in the Belleville district to points on the Chicago & Alton in Missouri were on what might be termed the normal basis and amounted to \$2.05 per ton to Kansas City, made up of a rate of 25 cents to East St. Louis and a rate of \$1.80 beyond. The Southern, being desirous of having mines on its line on a basis as favorable as that in effect from similarly situated points on other lines, asked for authority to establish rates from its mines to Chicago & Alton points on the same basis as applied from the Clover Leaf mines in the Belleville district. This authority was granted by the Chicago & Alton, and the rates became effective on the date above mentioned over the protest of certain coal interests at Kansas City. Later the Chicago & Alton advised the Southern that the authority for the publication of the rates in question was broader than had been intended and that protests had been received from various interested parties. The Southern was requested by carriers not involved in the rates to make the increases which are here under suspension. The proposed rates would be higher than those in effect prior to July 22, 1915, by 10 cents per ton.

Kansas City is 318 miles from East St. Louis by way of the Chicago & Alton, while East St. Louis is an average distance of 41 miles from the four stations on the Clover Leaf above named, making a total of 359 miles. The average distance from Southern Railway Belleville group mines to East St. Louis is 15 miles, so that the dis-

tance from these mines to Kansas City by way of the Southern and the Chicago & Alton is 333 miles. The Clover Leaf makes direct connection with the Chicago & Alton at East St. Louis, and the Southern absorbs charges for switching coal from its line to the Chicago & Alton at that point. The Southern contends that there is no justification from a transportation standpoint, or otherwise, for the maintenance of higher rates to points in Missouri on the Chicago & Alton from the Southern's mines in the Belleville group than from mines on the Clover Leaf in the same general territory.

The burden of justifying the increased rates proposed rested upon the respondents. The Southern is the only road participating in the rates involved which was represented at the hearing, and all of its testimony was in favor of the continuation of the rates now in effect. No justification of the proposed rates was attempted.

We find that the proposed rates have not been justified, and they will be required to be canceled. An order will be entered accordingly.

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No. 3771.
STONEGA COKE & COAL COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL

INVESTIGATION AND SUSPENSION DOCKET No. 71.
COAL AND COKE RATES.

INVESTIGATION AND SUSPENSION DOCKET No. 321.
COAL RATES FROM VIRGINIA MINES.

INVESTIGATION AND SUSPENSION DOCKET No. 625.
COKE FROM VIRGINIA POINTS.

INVESTIGATION AND SUSPENSION DOCKET No. 633.
COAL FROM VIRGINIA MINES.

Submitted November 4, 1915. Decided May 23, 1916.

1. Reasonable divisions to the Interstate Railroad out of the through rates involved fixed at 15 cents per ton on coal and 18 cents per ton on coke.
2. The provisions of section 18-A of the act regarding the rehearing of cases by the Commission does not contemplate that the rehearing be completed and a supplemental report and order made before expiration of original order.
3. Exhibits compiled by Commission's examiners of accounts, offered in evidence at a duly appointed hearing, without objection from interested parties, properly identified by the official stenographer and filed in the record along with all the other evidence in the case, are lawfully a part of the record.
4. Rates fixed under federal authority must yield "just compensation," which comprehends a reasonable return upon the value of property devoted to public use.
5. Where the traffic involved is only a portion of the traffic moving over the originating division, and only a small portion of the coal and coke traffic moving over the line, which, in turn, is only a small part of the entire coal and coke tonnage moving over the entire system, a claim that the rates on the traffic involved are confiscatory is not established until it be shown that the rates on the other traffic moving over the originating line are reasonably remunerative and that the revenue derived from the other coal and coke traffic moving over the line is adequate.
6. Commercial competition a controlling factor in the adjustment of the rates here considered.

7. Reasonable rates on coal from St. Charles and Appalachia are found herein to be such as do not exceed the rates contemporaneously in effect from Middlesboro-Jellico to the same destinations by more than the differential herein fixed. Reasonable coke rates for the future will be such as do not exceed \$2.50 per ton to Chicago with proportionately scaled rates to other destinations involved.
8. St. Charles included in Appalachia group and a differential from this group of 15 cents per ton over Middlesboro-Jellico rates on coal fixed. *Coal Rates from Virginia Mines*, 30 I. C. C., 635, modified.
9. The Appalachia group rate to be applied from operations on the Interstate Railroad.

R. T. Irvine for operators in the St. Charles district.

J. F. Bullock and *W. A. Glasgow, jr.*, for operators in the Stonega district.

W. A. Colston and *Helm Bruce* for the Louisville & Nashville Railroad Company.

H. M. Griggs for the New York Central lines.

J. C. Benning, *F. D. McKenney*, and *W. C. Carpenter* for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company and Pennsylvania Company.

J. W. Allison for Baltimore & Ohio Southwestern Railroad Company.

W. T. Stevenson for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, Commissioner:

This report is made on the further hearing in Docket 3771, had for the purpose of fixing divisions between the complainant Interstate Railroad and the defendant Louisville & Nashville Railroad; on the rehearing of Investigation and Suspension Dockets Nos. 71 and 321; and on the original hearing of Investigation and Suspension Dockets No. 625 and No. 633. Because all these cases involve the adjustment of coal and coke rates from the St. Charles and Appalachia districts in Virginia, to points on and north of the Ohio River and points in Kentucky and Tennessee, they will be considered in one report.

HISTORY OF THIS LITIGATION.

The petition in the *Stonega Case*, Docket No. 3771, was filed January 17, 1911, and sought the establishment of through routes between the Interstate Railroad and the Louisville & Nashville and the application thereto of joint through rates which would remove certain alleged discrimination in the coal and coke rates existing against the Stonega district as compared with the Norton district, the Appalachia district, and the St. Charles district. While this case was pending the Louisville & Nashville coal and coke rates from this terri-

tory were increased, as published in the following tariffs: Louisville & Nashville R. R. Co. I. C. C. No. A-12129; No. A-12130; No. A-12132; and No. A-12133. These tariffs were suspended by order dated December 19, 1911, in Investigation and Suspension Docket No. 71.

In the original report in the *Stonega Case*, 23 I. C. C., 17, decided March 12, 1912, it was found that the Stonega district was discriminated against with respect to coal rates as compared with the St. Charles district to the extent that the Louisville & Nashville rendered a service to the St. Charles mines, which, under substantially similar circumstances and conditions, it refused to render to complainants' operations on the Interstate Railroad. Discrimination was further found to exist against the operations of the complainants at Keokee.

In the state of the record as it then was the Commission was unable to determine what rates should be applied in order to remove the discrimination, and no order was made, but the case was held open to allow the parties to make such adjustments as would give effect to the views expressed in the report, it being stated that should the parties fail to reach a satisfactory adjustment a further inquiry would be had and such order made as might be found necessary and proper.

The parties did not reach an agreement, and upon supplemental petition, filed April 19, 1913, the Commission held a further hearing for the purpose of obtaining necessary facts on which an order could be drawn giving effect to the views expressed in its report, *supra*.

In the meantime, namely, on January 7, 1913, the Commission delivered its opinion in Investigation and Suspension Docket No. 71, 26 I. C. C., 20, in which the proposed increases in rates were held to be unlawful and the then existing rates were found to be reasonable, and were ordered to be continued for the statutory period of two years from that date.

Subsequent to the decision in Investigation and Suspension Docket No. 71, the Louisville & Nashville filed with the Commission its tariffs I. C. C. No. A-12819 and supplement No. 1 to I. C. C. No. A-12819, which made effective certain changes in the coal rates applying from the Appalachia and St. Charles districts as related to the rates from Middlesboro. These tariffs were suspended by suspension order dated October 9, 1913, in Investigation and Suspension Docket No. 321. The decision in this case was announced June 13, 1914, 30 I. C. C., 635, and the respondent was ordered to apply rates on coal from the mines in the St. Charles district to points north of the Ohio River within 400 miles from St. Charles which should not exceed the rates from the Middlesboro-Jellico group to said destinations by more than 10 cents per ton; beyond 39 I. C. C.

that the differential should decrease not less than 1 cent for each additional 100 miles; and to apply rates for the transportation of coal in carloads from the mines in the so-called Appalachia group to points north of the Ohio River which should not exceed the rates on coal in carloads from the Middlesboro-Jellico mines to said destinations by greater amounts than the existing differentials, provided that the differentials of Appalachia over Middlesboro-Jellico should in no case be less than the differentials of St. Charles over Middlesboro-Jellico. This order was made effective for the statutory period of two years from August 8, 1914.

In August, 1914, the Louisville & Nashville filed a petition in the district court of the United States for the western district of Virginia to enjoin the Commission's orders in Investigation and Suspension Dockets Nos. 71 and 321. The Louisville & Nashville sought to introduce before the district court certain evidence which had not been introduced in these cases when presented to the Commission. This court refused to entertain such evidence and held that same should be first presented to the Commission. On November 3, 1914, the Louisville & Nashville petitioned for a rehearing in both cases. By order dated November 9, 1914, the Commission granted the petitions and ordered that the cases be reopened for further hearing and consideration, the orders to remain in effect.

In the meantime, upon considering the record in the *Stonega Case* after it was submitted subsequent to the further hearing, it was deemed necessary in order to fix the particular division of rates between the Interstate Railroad and the Louisville & Nashville Railroad that certain additional facts should appear of record, and in a notice dated September 14, 1914, the Commission set this case down for further hearing for the purpose of entertaining testimony on the particular points set forth in the notice, and hearing was duly had thereon on October 6, 1914.

The first hearing on the reopening of Investigation and Suspension Dockets Nos. 71 and 321 was had February 23, 1915. The evidence was not completed at that time and a subsequent hearing was necessary, which was had September 9, 1915. During this interim the order in Investigation and Suspension Docket No. 71 having expired, the Louisville & Nashville filed its tariff I. C. C. No. A-13807 to become effective April 30, 1915, naming increased rates on coke from and to the points named in tariffs which had been under suspension in Investigation and Suspension Docket No. 71 and which were then under consideration on the reopening of this case. This tariff was suspended in Investigation and Suspension Docket No. 625.

During the same period the Louisville & Nashville Railroad Company filed its tariff supplement No. 15 to I. C. C. No. A-12819, to

become effective May 10, 1915, naming coal rates from and to territory involved in Investigation and Suspension Dockets Nos. 71 and 321, which were higher in some instances than the rates found reasonable in the original report in Investigation and Suspension Docket No. 71. This tariff was suspended, but it was later made to appear that the rates stated therein were in conformity with the 10-cent maximum differential which respondent was permitted to establish in Investigation and Suspension Docket No. 321, the order in which was kept in effect, though the case had been reopened. The suspension was, therefore, canceled.

The Louisville & Nashville also filed its tariff supplements Nos. 17, 18, 20, and 21 to I. C. C. No. A-12819, to become effective June 7, 1915, naming coal rates from and to points involved in Investigation and Suspension Docket No. 321, which established differentials, Middlesboro under St. Charles and Appalachia, of more than the 10 cents fixed in that case. It appearing that these tariffs were in direct conflict with the order in Investigation and Suspension Docket No. 321, the Louisville & Nashville Railroad Company, upon request, was granted special permission to cancel these tariffs, which was done by supplement No. 24.

Coincident with above action the Louisville & Nashville filed its tariffs, supplements Nos. 27, 28, 29, 30, 31, and 32 to I. C. C. No. A-12857, stating increased coal rates from the territory involved in Investigation and Suspension Dockets Nos. 71 and 321 to points in Alabama, Tennessee, Kentucky, and to Ohio and Mississippi river crossings. These tariffs were suspended in Investigation and Suspension Docket No. 633.

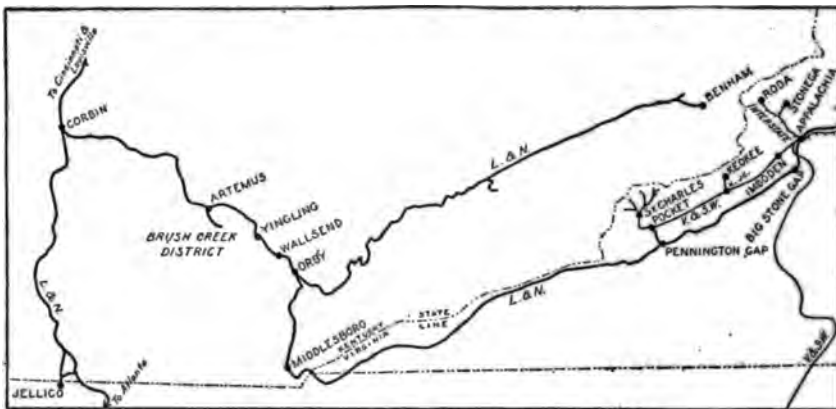
By order of July 14, 1915, the four cases, Investigation and Suspension Dockets Nos. 71, 321, 625, and 633, were consolidated.

TERRITORY INVOLVED AND PHYSICAL CONDITIONS.

In the present consideration we are not concerned with originating territory east of Appalachia, since in the previous report in the *Stonega Case, supra*, it was found that the complainant's contentions with respect to discrimination, as compared with Norton, were not sustained. Appalachia is the junction point between the Interstate Railroad and the Louisville & Nashville Railroad. The Interstate Railroad originates all traffic moving from the Stonega district, which it delivers to the Louisville & Nashville interchange tracks at Appalachia. No coal or coke is produced at Appalachia proper, but this point is an assembling station, and the producing points delivering coal to Appalachia to be forwarded via the Louisville & Nashville Railroad may be designated as the Appalachia district.

To the west, the originating territory involved does not extend beyond the St. Charles district. Coal traffic moving from this district to be forwarded via the Louisville & Nashville reaches the main line of that road at Pennington Gap, a point just 20 miles west of Appalachia.

The traffic here concerned moves over the Louisville & Nashville Cumberland Valley division through Middlesboro, Ky., and Sinks, Ky., from which latter point it moves either to Cincinnati or Louisville, depending on the routing, from which latter points, in connection with northern carriers, it moves to all points north of the Ohio River located in Ohio, Indiana, Illinois, and Michigan. Some of the traffic, however, is destined to points on the Ohio River or points in Kentucky and Tennessee.



All points in the Stonega district are located on the rails of the Interstate Railroad. All points in the St. Charles district are located on the rails of the Virginia & Southwestern Railway, but the Louisville & Nashville Railroad has trackage rights over the rails of this road from the St. Charles district as far as Pocket, from which point it owns 2 miles of rails connecting with its main line at Pennington Gap. The accompanying map shows the originating territory involved.

Since the references made to the topography of the country are in the main with respect to the Cumberland Valley division, which includes the line from Norton, it should be noted that Norton lies a fraction over 10 miles to the east of Appalachia. It appears that from Norton, Va., to the Virginia-Tennessee state line, a distance of 66.11 miles, there are 5.33 miles of level track; that there are 19 ascending grades aggregating total ascents of 880 feet over a distance of 20.15 miles; that there are 24 descending grades, totaling 1,782 feet, spread over a distance of 40.58 miles; that there are 172 curves,

extending, in miles, 20.14; and that straight-line track measures 45.97 miles.

In the state of Virginia on the Cumberland Valley division there are six tunnels, with an aggregate length of 3,382 feet, the minimum length being 50 feet and the maximum length 2,324 feet. There are 16 iron bridges with an aggregate length of 1,931 feet, minimum length 16 feet and a maximum length of 480 feet; there are two timber trestles, one 13 feet long, the other 737 feet long. The Tennessee-Virginia state line divides the longest tunnel, and to the maximum length of the tunnel given above, 2,324 feet, must be added 1,038 feet, the distance which this tunnel extends into the state of Tennessee, making its total length 3,362 feet.

It appears that the class of locomotive in use on the Cumberland Valley division is designated as type H-23, the weight of which, including tender, is 160 tons, with a tractive power of 35,000 pounds. The tonnage rating based on this type of locomotive from Norton to Ocoonita, distance 37 miles, is 775 tons; from Ocoonita to Middlesboro, distance 37 miles, 790 tons; from Middlesboro to Ferndale, distance 7 miles, 790 tons; from Ferndale to Corbin, distance 37 miles, 630 tons; from Corbin to Snider, distance 50 miles, 1,500 tons; from Snider to Winchester, distance 41 miles, 950 tons; from Winchester to Covington, Ky. (Cincinnati), distance 94 miles, 2,720 tons.

No details appear in the record concerning the physical transportation conditions north of the Ohio River.

STONEGA COKE AND COAL COMPANY CASE.

Prior to March 17, 1903, under a contract with the Stonega interests, which in addition to operating large coal properties own and operate the Interstate Railroad, the Louisville & Nashville obligated itself to operate over the tracks of this proprietary road, place empty cars at the mines or furnaces for loading, and accept delivery of freight at the mines or furnaces. To comply with the contract the Louisville & Nashville tariffs published the same rate from the Stonega producing points as applied from all the other producing points located in the region extending from St. Charles to Norton. From and after the above date, however, the Louisville & Nashville refused to be further obligated by the contract, declined to make further deliveries of empty cars to the Stonega mines and furnaces or accept loaded cars of coal or coke except as delivered to it at Appalachia, and by supplement No. 21 to I. C. C. A-5272 canceled the operation of its region rates to the Stonega operations. The rate applicable to the Stonega operations was thereby increased by the amount of the cost of the transportation incident to receiving the empty cars at

Appalachia and hauling them to the mines and furnaces and hauling the loaded cars from the mines or furnaces to the interchange tracks of the Louisville & Nashville at Appalachia. There was no proportionate increase in the rates from other producing points in the region, and the Stonega company, as well as the independent operators located on the Interstate Railroad, were accordingly subjected to a rate disadvantage.

To correct this action of the Louisville & Nashville, the Stonega interests first instituted a suit in the United States district court to recover damages for the breach of the contract. This case was dismissed for want of jurisdiction, but a similar action was begun in the state courts, to which, however, a demurrer was sustained by the supreme court of Virginia, 106 Va., 223, 55 S. E., 551, on the ground that the contract by its terms was not made to extend over any definite period of time and therefore might be rescinded by either party at will. During the progress of this litigation the act to regulate commerce was amended giving the Commission power to establish through routes and maximum joint rates applicable thereto. The Stonega interests then instituted this original proceeding before the Commission with a view to correcting the situation produced by this action of the Louisville & Nashville. The prayer of this complaint was that through routes be established between the Interstate Railroad and the Louisville & Nashville Railroad, and that joint through rates be made applicable thereto which would remove the discrimination claimed to result by reason of the cancellation of the application of the Appalachia rates from the Stonega points.

In the original report in this case, 23 I. C. C., 17, the Interstate Railroad Company was found to be a common carrier subject to the provisions of the act to regulate commerce, and entitled to have through routes established with respect to traffic originating on its line routed over the lines of the defendants herein, and to have just and reasonable rates prescribed applicable thereto. What these rates should be was not considered, since their reasonableness was not in issue. Undue discrimination against complainants was found to exist in favor of their competitors in the vicinity of St. Charles to the extent that the Louisville & Nashville Railroad Company rendered a service to the St. Charles mines which, under substantially similar circumstances and conditions, it refused to render to complainants' operations on the Interstate Railroad. Unlawful discrimination was also found to exist against complainant's operations at Keokee.

In compliance with the findings in the original report, defendant Louisville & Nashville filed a tariff, G. F. O. 2043, I. C. C. No. A-12789, carrying a through rate from Keokee, which was its then

existing Appalachia rate, plus 10 cents, and in further compliance it offered to establish through routes and joint rates with the Interstate Railroad on coal and coke, the joint rates to be the Louisville & Nashville group rate for the region, or the Appalachia rate, to which was to be added the Interstate Railroad charges up to Appalachia, and the Interstate Railroad was asked to name the charges it wished to make, which would constitute its proportion or division of the through rate. In the meantime, the Commission's opinion and order in Investigation and Suspension Docket No. 71 was published, requiring the continuance for a two-year period of the then existing rates from Appalachia and St. Charles. The Interstate Railroad refused to concur in such joint rates.

The Stonega case is now before the Commission solely for the purpose of fixing divisions which will remove the discrimination heretofore found to exist, prejudicial to the Stonega district as compared with the St. Charles district.

As stated in the original report in this case at page 25, "the conditions of transportation are substantially the same between the two fields." The peculiar construction of the mine tipple tracks prevailing in the St. Charles district is claimed to make the operations in that district easier than the operations in the Stonega district, but this difference is not reflected in the cost of service for the two districts, which will be discussed hereinafter. The finding of discrimination related only to coal, and the operating costs of the Louisville & Nashville in the St. Charles district are not pertinent with regard to what the divisions on coke should be. In fixing the divisions on coke, however, the Interstate Railroad should be compensated out of the through rates established only for such service as its common-carrier duties require. It appears that this coke traffic involves extra switching at the furnaces. This, however, is not intended to be compensated for in the divisions herein prescribed. Except as to this furnace switching there is no further appreciable difference between the coal and coke traffic in the Stonega district except the greater detention of coke cars.

At the last hearing in this case the Louisville & Nashville furnished figures purporting to show the cost for the service it renders the St. Charles district in originating coal traffic, as follows: Operating expenses, St. Charles to Pennington, average distance 7.4 miles, 10.63 cents per ton. This figure includes the amount the Louisville & Nashville had to pay to the Virginia & Southwestern for the use of its tracks under their trackage agreement. It should be noted that the Virginia & Southwestern tracks extend from St. Charles to Pocket and that from Pocket the Louisville & Nashville has built 2

miles of track connecting with its main line at Pennington. The figure of 10.63 does not include maintenance of this 2 miles of track, interest, taxes, nor car per diem, but certain items of car repairs, renewals, and depreciation are included. The original cost of this 2 miles of road is shown to be \$137,958.52, on which amount the interest would be 2.85 cents per ton. The taxes on this investment figure 0.96 mills per ton; cost of maintenance, Pocket to Pennington, 5.32 mills per ton. The book cost is shown to be \$63,681.75, on which amount the interest cost is 1.32 cents per ton.

The coal tonnage moving from the St. Charles district via the Louisville & Nashville for year ending June 30, 1912, was 133,453 tons, and for year ending June 30, 1913, it was 153,059 tons.

It appears that a test made by the Louisville & Nashville with respect to 87 cars showed that the average detention at St. Charles was 34 hours, or 1.4 days, on which the car per diem would be 1.46 cents per ton. From certain demurrage statistics it appears that the average detention on the St. Charles division was 2.85 days, on which basis the average per diem would be 2.99 cents per ton. It does not appear from the record whether this detention on which demurrage was due was in addition to the ordinary free time of 48 hours or not. If it was, the detention applicable under car per diem would be almost double this figure of 2.99 cents per ton.

The witness for the Louisville & Nashville stated the cost to that road for bringing coal from St. Charles to Pennington to be 10.63 cents per ton, which included wages of enginemen, wages of trainmen, fuel, water, lubricants, train supplies, other supplies for locomotives, engine-house expenses, locomotive and freight car repairs, renewals, and depreciation, for the operations by the Louisville & Nashville, and also the amount paid to the Virginia & Southwestern for maintenance, operation, taxes, and interest, amounting to 5.55 cents. The 10.63 is thus a partial cost, as it does not include interest on equipment, nor maintenance of the track from Pocket to Pennington, nor interest thereon, as well as other items. Counsel for the Stonega company attempted to show that the inclusion of the omitted items would bring the cost up to 23.32 cents per ton, but this contains some duplication, since a per diem charge and an amount for repairs, renewals, and depreciation of freight cars are both included.

At the first supplemental hearing on the question of divisions the Interstate Railroad submitted figures showing the cost to it for the service it performed for the two-year period ending June 30, 1913. Those figures made no distinction between costs on coal and costs on coke. At the second hearing these costs were shown separately, as follows:

Costs on coal and coke to Interstate Railroad, in cents per ton, year ending June 30.

	Coal.		Coke.	
	1912	1913	1912	1913
Tonnage	819,266	901,932	353,882	426,678
Operating expenses and taxes	<i>Cents.</i> 9.07	<i>Cents.</i> 9.74	<i>Cents.</i> 14.08	<i>Cents.</i> 15.07
Coal car per diem	3.19	3.19	5.42	5.42
Interest on investment	3.87	3.87	3.87	3.87
Total	16.13	16.80	23.37	24.36

The coal car per diem figures were obtained from the experience of the Interstate road as a member of the per diem association for the year ending June 30, 1914. These figures, obtained from actual experience, were then arbitrarily used in the approximation for the years 1912 and 1913. It should be noted that while the Interstate Railroad now owns approximately 600 coal cars, during the years of 1912 and 1913 it did not own any coal or coke cars, and the item for interest on investment, therefore, only includes interest on investment in right of way, locomotives, and about 84 cars used locally.

The transportation performed by the Interstate Railroad in connection with its coal traffic is essentially an originating service, which was described as follows: A list of available empty cars is obtained from the Louisville & Nashville each day; some of the cars listed are on one track and some on other tracks in the Louisville & Nashville yards at Appalachia. Such cars as are listed must be switched out onto designated tracks, then switched back onto a line of the Interstate Railroad. The cars thus obtained are then distributed to the several mines by the Interstate Railroad. The empty cars in most instances are weighed before they are placed for loading. After being loaded they are switched out and weighed and then delivered to the Louisville & Nashville interchange track at Appalachia. The length of haul ranges from 5 to 12 miles.

From the cost figures of the Interstate Railroad as revised at the last hearing, and from the subsequent evidence, it is said that the greater cost of handling coke is due to the additional services necessary to be rendered in connection with this transportation, as compared with the services necessary in handling coal. The additional expense comes about incident to the necessary weighing of coke cars empty and loaded and the additional switching required to place these cars at the coke ovens, and since all coke ovens are not fired at the same time it becomes necessary to switch out loaded coke cars from the cars that are not completely loaded, which greatly increases

the cost of originating the coke traffic; also additional expense is brought about by reason of the fact that the coke cars are longer in loading and the period of detention of such cars is greater than it is with coal cars, thus increasing the item of coke car per diem.

On traffic originated by the Interstate Railroad and delivered by it to the Virginia & Southwestern for delivery in connection with the Southern, or the Carolina, Clinchfield & Ohio Railway for delivery to the southeast, a division of 18 cents is allowed the Interstate Railroad. It might also be noted that the local rate on coal and coke from Stonega and all other points on the Interstate Railroad in the Stonega district to Appalachia is 25 cents per ton.

The Louisville & Nashville contends that it should have as its division its full local from Appalachia. Before the reopening of Investigation and Suspension No. 71 and Investigation and Suspension No. 321 this contention was necessarily *res adjudicata*. The existing rates to both St. Charles and Appalachia were found reasonable and the relationship of the two scales of rates was established. To comply, therefore, with the direction to remove the discrimination found to exist against Stonega the Louisville & Nashville must either extend its service to the Stonega operations at the Appalachia rate or allow a division out of its Appalachia rates equal to the cost to it of the additional service it performs in the St. Charles district. It could not have removed the discrimination by discontinuing the additional service in the St. Charles district, as this would have made a greater charge applicable than the rate ordered in from St. Charles for a two-year period in Investigation and Suspension Docket No. 71. In support of this contention, however, extensive cost figures were introduced similar to those originally offered in Investigation and Suspension Docket No. 71 and Investigation and Suspension Docket No. 321. In view of the issues before the Commission in this case, this evidence need not be considered here. Since these two last-named cases have in the meantime been reopened what the proper through joint rates shall be, out of which such divisions as may be here fixed, shall apply, is a matter to be decided in these cases, in which the questions of cost to the Louisville and Nashville will be more properly discussed.

The fact that the traffic from Stonega is a two-line haul, as compared with a one-line haul on the traffic from St. Charles, was also advanced in this case; but this question will be discussed in the reconsideration of Investigation and Suspension Docket No. 321.

In considering the cost to the Louisville & Nashville for originating the traffic in the St. Charles fields of 16.07 cents per ton as a measure for a reasonable division to the Interstate Railroad for performing a similar service in the Stonega field, it should be noted that

that figure is based on a tonnage approximately one-sixth of that handled by the Interstate.

From a consideration of all the facts and circumstances, the Commission is of opinion and finds that 15 cents per ton on coal and 18 cents per ton on coke will be reasonable divisions to the Interstate Railroad out of such through rates as are permitted herein upon the reconsideration of Investigation and Suspension Docket No. 71 and Investigation and Suspension Docket No. 321.

INVESTIGATION AND SUSPENSION DOCKET NO. 71 ON REHEARING.

This case was originally decided January 7, 1913, 26 I. C. C., 20. It was reopened November 9, 1914, on motion of respondent, the Louisville & Nashville, and the rehearing was begun February 23, 1915. In the meantime, on January 7, 1915, the two-year period for which the original order was to run expired. At the rehearing it was urged for respondent that since the order had expired there was nothing in the case to reconsider. Counsel contended that section 16a, giving the Commission power to reopen and reconsider its cases, contemplated a rehearing and reconsideration before the expiration of the order in the particular case. This section provides:

That after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein * * *. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. * * * Any decision, order, or requirement made after such rehearing reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

From this it is plain that the Commission may grant a rehearing in a case in which no order is made, there being only a "decision." In such a case no time limit upon a rehearing could be contemplated. No provision is made for any different treatment of a rehearing on a "decision" and a rehearing of a case where an order is made, and no distinction can be drawn under this language. This being true it can not be said that this section contemplates necessarily that the rehearing and reconsideration of a case in which an order is made must be completed before that order expires.

Again, under this section, an application for a rehearing may be made "at any time." A case in which an order is made might therefore be reopened, and reheard after the effective period of the order has expired. Incidentally, the Commission may, on a rehearing, make just such an order giving effect to its views on rehearing as it may make on an original hearing. This must be held to confer upon the Commission the power to fix the period during which its supple-

mental order shall be effective as well as conferring the power to draft supplemental orders in other particulars.

This case was reopened on respondent's motion and it can not be heard to complain of something it initiated and requested, but had this not been so, the course of this procedure works no hardship upon the respondent. The original hearing involved increases in rates which it was found had not been justified and the existing rates were ordered to be kept in effect for a two-year period. At the expiration of such period the formerly proposed increases do not go into effect automatically. To obtain the benefit of the increases the rates must be lawfully published by filing tariffs in the prescribed manner. Rates so published would then be subject to suspension and investigation again, and this is what has happened in this case. The respondent filed tariffs substantially republishing the rates formerly carried in the tariffs originally suspended and these tariffs were protested and suspended in Investigation and Suspension Dockets Nos. 625 and 633, which cases have been consolidated herewith.

The following table shows the rates on coal and coke from Appalachia and on coal from St. Charles, together with the short-line distances to the respective destinations stated. The destinations taken are points selected at random in the territory involved. For comparative purposes the rates on coal from the Middlesboro-Jellico district and the Kanawha district, together with the short-line distances to the respective destinations, are also given, as are the rates on coke, together with the respective short-line distances from the Connellsville district. These comparative rates are from competing districts producing the respective commodities. The present rate; rate prior to advance carried in tariff suspended in Investigation and Suspension Docket No. 71; rates suspended in Investigation and Suspension Docket No. 71; and rates on coke suspended under Investigation and Suspension Docket No. 625; and rates on coal suspended in Investigation and Suspension Docket No. 633, are also given.

39 I. C. C.

Coal and coke rates in cents per ton of 2,000 pounds.

To—	Coal rates.										Coke rates.			
	Rates prior to I. & S. 71.					Rates from Kanawha district.		Rates suspended in I. & S. 71.			From Appalachia.		From Connells-ville district. ¹	
	From Appalachia.		From St. Charles.		From Middleboro.	Rate.	Miles. ²	From Appalachia.	From St. Charles.	Present rate. ³	Rate.			
	Rate.	Miles.	Rate.	Miles.										
Louisville, Ky.:														
Black coal.....	85	279	85	264	75	215	100	290	110	85	100			
Blue run.....	95		95				100		120	95	110			
Other kinds.....	105		105		95		100		130	105	120			
Lexington, Ky.....	130	223	130	218	120	169	120	205	155	130	145			
Nashville, Tenn.....	145	349	145	334	135	285		465	170	145	160			
Cincinnati, Ohio.....	100	204	100	279	90	230	100	226	125	100	115			
Dayton, Ohio.....	135	348	125	333	125	284	125	280	160	133	150			
Akron, Ohio.....	165	545	155	530	155	481	165	342	185	163	175			
Detroit, Mich.....	168	553	145	538	145	489	140	370	192	148	182			
Grand Rapids, Mich.....	210	603	190	588	190	539	190	477	225	197	215			
Kalamazoo, Mich.....	205	554	185	539	185	480	185	451	220	193	210			
Indianapolis, Ind.....	165	390	155	375	155	326	155	336	190	164	180			
Fort Wayne, Ind.....	180	461	160	446	160	397	160	355	195	169	185			
Terre Haute, Ind.....	205	441	190	426	190	377	190	408	225	197	215			
Chicago, Ill.....	205	573	190	559	190	509	190	511	225	198	215			
Deaville, Ill.....	205	490	190	475	190	426	190	422	225	197	215			
Peoria, Ill.....	210	617	195	602	195	553	210	548	230	202	220			

¹ The short-line distance is figured from Connellsville, Pa.

² The short-line distance is figured from Cabin Creek Junction, W. Va.

³ Present rates from Appalachia are same as rates prior to I. & S. 71, except to Detroit, Mich., the present rate is 102. The present rates from Middleboro to points shown in table are same as rate shown prior to I. & S. 71, except to Detroit, Mich., the present rate is 140. The rates from Middleboro, suspended in I. & S. 331, are the same to points shown as rates prior to I. & S. 71, except to Detroit, Mich., where a rate of 146 was published.

⁴ Rates suspended in I. & S. 633 same as those suspended in I. & S. 71.

⁵ The present rates to St. Charles are from supplement No. 15, I. C. C. No. 12819.

⁶ The present coke rates are same as rates prior to I. & S. 71.

⁷ The rates suspended in I. & S. 625 are the same as those suspended in I. & S. 71.

⁸ Coke rates to these points not involved.

The rehearing of this case was petitioned on the following grounds: (1) That the rates resulting from the Commission's decision are confiscatory; (2) that evidence was considered by the Commission which was not lawfully in the record; (3) that the essential findings of fact made by the Commission are contrary to the indisputable character of the evidence; and (4) that the order issued subsequently in Investigation and Suspension Docket No. 321 is in conflict with the order in Investigation and Suspension Docket No. 71. A request is also made for the fixing of divisions between the petitioner and the lines north of the Ohio River, in the event the proposed increases are again denied, which will yield the petitioner the additional revenue which it desires. The case will be discussed in the inverse order of this statement of the grounds for rehearing.

It seems to be the view of the respondent that the order in Investigation and Suspension Docket No. 71 was a denial of its aim to create a differential in rates between St. Charles and Appalachia, on the one hand, and Middlesboro-Jellico, on the other, whereas the order in Investigation and Suspension Docket No. 321 created such a differential, and that, therefore, the order in Investigation and Suspension Docket No. 321, the more recent pronouncement by the Commission, may be taken as a change in view on the issues formerly presented in Investigation and Suspension Docket No. 71. Such a position can only rest upon a misunderstanding of the issues involved in Investigation and Suspension Docket No. 71.

Investigation and Suspension Docket No. 71 involved only the issue of the justification of certain increases in rates. The justification of the increases by the respondent, Louisville & Nashville, was based solely upon the relation of revenue derived by it out of its divisions of the through rates involved as compared to the cost to it of hauling the traffic, and the relation of the net revenue to the value of property dedicated to the public use in connection with such traffic. The finding was that the increases had not been justified.

Investigation and Suspension Docket No. 321 involved the reasonableness of certain differences which the Louisville & Nashville proposed to make in the coal rates between Appalachia and St. Charles, on the one hand, and Middlesboro-Jellico, on the other. This issue was met by a showing of cost incident to hauling the traffic for the additional distance from the Appalachia and St. Charles regions over the distance from Middlesboro-Jellico, the former territory being the more remote from the consuming markets. The finding was that a maximum difference of 10 cents had been justified.

To discuss the third ground in detail would lead to an examination of the cost figures and other statistical data which may be discussed more pointedly in connection with the first ground.

The grievance of the respondent, as set forth in its second ground, is based upon the fact that it did not have an opportunity to cross-examine the Commission's accountants who prepared certain cost figures filed in the record as Commission exhibits and on which certain conclusions of the report were founded.

There is no merit in the contention that this evidence is not properly in the record. These exhibits were offered and received at the duly set hearings had in the case, and were properly identified by the stenographer's certificates and filed in the official record of the case. The record discloses no objection on the part of the respondent to their introduction, and no request on behalf of respondent that the accountants who prepared them be produced for cross-examination.

But whatever prejudice the respondent may have suffered by reason of its failure to cross-examine, that prejudice has been removed on the rehearing, since the respondent was afforded the opportunity to and did cross-examine the examiner of accounts under whose supervision all the exhibits except No. 5 were compiled.

In support of the first ground of its petition for a rehearing, the respondent offered two affidavits, one that of its statistician, who testified previously in the case, bringing down to date the results in accordance with the methods used in arriving at the results testified to in his evidence; the other affidavit, that of its traffic official who had testified in the case, which, among other things, states that—

the said present rates, when applying to points beyond the lines of the Louisville & Nashville Railroad Company, both on coal and on coke, have been fairly and properly divided between the Louisville & Nashville Railroad Company and its connections north of the Ohio River.

There is also an argumentative opinion set forth stating that the—suspended rates in controversy are not only reasonably low rates and are not unreasonably high rates, but that they are, in fact, abnormally low rates, and they are rates which are reasonably low to the shippers and are not rates as high as the carrier might reasonably demand.

During the argument on rehearing it was stated by counsel that this witness in the *Stonega Case*, Docket No. 3771, had testified, and offered extensive exhibits to show, that the rates in effect prior to the increases here involved were reasonable, and the inference was drawn that his subsequent testimony is in conflict with his former opinion. From an examination of the testimony referred to such an inference is not justified. The witness expressed the opinion therein that not only were the rates then in effect reasonable, but that they were lower than they might reasonably be. It should be noted, however, that it also appears from the evidence in question that the rates were made with a view to lining up this Appalachia-St. Charles

territory with competing fields located on the line of the Chesapeake & Ohio Railway.

The evidence offered by the respondent on the rehearing was given entirely by its statistician who offered the above-mentioned affidavit, and by one of its traffic officials. The testimony of the statistician was practically a repetition of the matters set forth in his affidavit. A detailed explanation of the several steps employed in arriving at the results shown is given in his testimony. The statements of statistics in the affidavit and in the exhibits filed on rehearing set forth only the total approximated figures, unaccompanied by the supporting detailed data showing how the results offered were obtained. It should be noted that the respondent did not file the detailed working figures, not that it desired to withhold anything, but that the record might not be encumbered thereby.

The respondent's traffic witness gave exhaustive testimony correcting certain minor errors in the statements of rates and distances as originally filed. Elaborate compilations were submitted showing respondent's earnings under present divisions as compared with earnings resulting to the northern lines, together with further evidence as to the traffic and transportation conditions prevailing in the territory involved.

As upon the original presentation of this case, so here, all of the evidence of the respondent is addressed only to a justification of the revenue it will receive under the increases it proposes for its part of the particular transportation, although all the rates here involved are joint through rates.

There is, however, the unsupported opinion of its traffic witness to the effect that the proposed through rates are reasonable in and of themselves. The lines north of the Ohio River offer no testimony regarding the reasonableness of the through rates under inspection. They contend, and some evidence is offered to show, that their present divisions are just and that the revenue yielded thereby is reasonable, as compared with the revenues derived from like traffic originating on their own lines and like traffic received from other connecting carriers.

The protesting operators show the commercial conditions under which their product is marketed in competition with that of other producing districts, and contend that the formerly existing rates were originally fixed so as to put them on a parity or better with their competitors, and that their business has been established on this basis, and that the proposed increases will eliminate them from the market territory involved. The earnings upon the present through rates, as compared with the earnings on the rates from competing producing districts, are offered in support of their contention for the maintenance of the present rates.

CONFISCATION.

It is urged that the present rates, which were voluntarily maintained for a long time by the respondent, are now confiscatory, and that for this reason the Commission's order, denying the respondent the increases it desires to make, is violative of its constitutional rights. The rights of property are specifically protected under two separate provisions of the constitution, namely, the fifth and the fourteenth amendments. The inhibition with respect to the federal government, as set forth in the fifth amendment, is "nor shall private property be taken for public use, without just compensation," while the limitation with respect to the acts of the several individual states, as contained in the fourteenth amendment, is "nor shall any state deprive any person of life, liberty, or property, without due process of law." For state-made rates to be within the requirements of the fourteenth amendment they must not be confiscatory. This raises the query as to what constitutes confiscation. This depends on whether or not rates to be nonconfiscatory must yield only the cost of the service, or whether they must not also yield, in addition, a profit on the investment. Such an issue necessarily depends upon the judicial determination of the question of whether or not prospective profit is property within the meaning of the fourteenth amendment.

The rates here involved, however, are interstate rates imposed under the authority of the federal government and therefore subject to the requirements of the fifth amendment, the plain language of which leaves no uncertainty as to its scope. The present rates must yield "just compensation." For compensation to be just, it must provide a reasonable return upon the value of property devoted to public use. *San Diego Land & Town Co. v. Jasper*, 189 U. S., 439, 446. *Willcox v. Consolidated Gas Co.*, 212 U. S., 19, 41. We therefore understand the term confiscatory rates as used by the respondent herein as synonymous with the term noncompensatory rates.

The claim that the present rates have become confiscatory depends upon three sets of figures, namely, those showing alleged property value, operating expenses, and revenue. The figures relied on are in every case only approximations. The coal traffic for which the statistics are given constitutes only a part of the total coal traffic, which itself is only a part of the total traffic, moving over only a part of a small division of a great railroad system whose accounts are primarily kept with a view to showing results for the entire system.

The present case, therefore, is readily distinguishable from *Northern Pacific Ry. v. North Dakota*, 236 U. S., 585, where the state of North Dakota had segregated the entire lignite coal traffic and imposed thereon intrastate rates, which, according to satisfactory figures, clearly proven, produced a revenue which, when applied to the entire

lignite traffic, was hardly sufficient to return anything more than the mere cost of the service. In the present case the rates involved apply to only a small part of the coal and coke traffic from a single division of the respondent's system, and this part of the respondent's traffic has not been segregated by the Commission. The respondent, it is true, seeks to have this part of its traffic segregated for the purpose of testing the reasonableness of rates voluntarily established by it, and which it now proposes to increase, but, as held in *St. Louis & San Francisco Ry. v. Gill*, 156 U. S., 649, cited with approval in *Northern Pacific Ry. v. North Dakota*, *supra*, page 600, a carrier can not claim the right to earn a net profit from every mile, section, or other part into which its road may be divided.

It appears that the statistical results shown in the statements offered on rehearing were arrived at, in general, on the same formula as those used in the exhibits filed at the original hearing. Attention was given upon the rehearing especially to those points of criticism which had been raised against former exhibits. The method of ascertaining the empty car mileage attributable to this coal and coke traffic was extensively discussed, one of the Commission's examiners of accounts, who had been called as a witness for the protestants, being cross-examined upon this point. The question whether the trains selected by the Commission's examiners of accounts in compiling the Commission's exhibits formerly considered were representative trains was again reviewed. The showing as reflected by the exhibits filed by the respondent is not substantially different from that afforded from the statistics presented at previous hearings. It seems unnecessary to enter upon a minute discussion of these statistical claims, as we do not consider them controlling elements in the disposition of this case upon rehearing.

**LEGAL OBSTACLES TO ACCEPTANCE OF CONTENTION THAT RATES ARE
CONFISCATORY.**

Even if we were able to found upon these statistical exhibits any definite conclusions as to just what property values, operating expense, and revenue should be distributed to this coal and coke traffic, respondent's contention that the rates are confiscatory would not be supported by such conclusions in law, since the traffic on which these conclusions would be based is only a portion of the traffic moving over the originating line, and only a small portion of the coal and coke traffic moving over the whole line which, in turn, is only a very small portion of the total coal and coke tonnage moving over the whole system, and there is no proof in this record that the rates on the other traffic moving over this originating division are reasonably remunerative, or that the rates on the other coal and coke moving over this division from competing producing fields are reason-

ably high, or that the other coal and coke rates generally for the system as a whole yield proper revenue. See *Lehigh Valley Railroad Co. v. United States*, 204 Fed., 986; *St Louis & San Francisco R. R. v. Gill*, *supra*; *Northern Pac. R. R. v. No. Dakota*, *supra*.

This Cumberland Valley division, extending for some 118 miles from Norton, Va., on the east to Corbin, Ky., on the west, serves many coal operations and originates a coal tonnage of which that here under consideration is only a small part. What it costs the respondent to handle the coal it originates at Middlesboro on this division, for instance, is not shown. A comparison between the cost of the Middlesboro coal traffic with the St. Charles-Appalachia traffic, together with a comparison of the respective revenues and earnings, would perhaps reflect the justness of respondent's apportionments to the traffic here involved better than any amount of opinion testimony as to the reasonableness of those apportionments.

In view, however, of a new and important fact developed at the further hearing of this case the importance of the cost figures and other statistics formerly used as a basis of decision of this case are greatly minimized as bearing upon the reasonableness of the rates in controversy. It now appears by the testimony of a traffic witness of the respondent that all coal rates in this region were originally made without any consideration of cost of service or any transportation or traffic condition other than competition. And here again the present case is to be distinguished on facts from *Northern Pacific R. R. v. No. Dakota*, *supra*, where on page 599 it was pointed out:

But a different question arises when the state has segregated a commodity, or a class of traffic, and has attempted to compel the carrier to transport it at a loss or without substantial compensation, even though the entire traffic to which the rate is applied is taken into account. On that fact being satisfactorily established, the presumption of reasonableness is rebutted. *If in such a case there exists any practice, or what may be taken to be (broadly speaking) a standard of rates with respect to that traffic, in the light of which it is insisted that the rates should still be regarded as reasonable, that should be made to appear. As has been said, it does not appear here.* [Italics ours.]

This matter of commercial competition which was developed at the rehearing is responsible for a standard of rates in the light of which the rates involved must be considered, even if it had been found that these rates were actually noncompensatory.

COMPETITION.

It appears that not only were the operations in the Appalachia and St. Charles fields begun on the basis of rates for these districts and the Middlesboro-Jellico district which put all the Cumberland Valley division fields on a practical parity with the Thacker field, served by the Norfolk & Western, and the Kanawha field, served by the Chesapeake & Ohio, into the market territory here involved, but

that during the litigation of these cases the rates applicable from Middlesboro in approximately 1,400 instances out of a total of some 24,000 rates published to the northern destinations have been reduced in order to put Middlesboro, as was testified by the traffic witness, on a better basis to compete with the Kanawha fields. While the rates from Middlesboro are being lowered because of competition, the adjustment from St. Charles-Appalachia is being put on a cost basis which, if correct, might justify an increase in rates. The result of such a rate policy, if continued, is plain. But it is urged that the Commission is not in the attitude of a traffic manager and has no jurisdiction to give regard to such matters. The act to regulate commerce, however, makes it the duty of this Commission to intervene between the shippers and the misdirected judgment of traffic officials where the result would so plainly produce an unlawful discrimination.

The market territory involved is a highly competitive territory commercially, and, as far as the Louisville & Nashville is concerned, the traffic is highly competitive, since it has to meet water competition at Cincinnati and Louisville via the Ohio River on coal moving from the Kanawha district via that water route. The rates to Cincinnati and Louisville are compelled rates, it is said, and must be observed if the traffic from these Virginia producing fields and Middlesboro is to move into this market. These rates are observed and, it appears, will continue to be observed from Middlesboro.

The rates under consideration are joint through rates, whereas the figures of the respondent have been directed solely to its earnings out of the divisions it receives under the joint through rate arrangements it has with the lines north of the Ohio River. It appears, however, that the rates under consideration, when considered as joint through rates, compare favorably with the net ton-mile earnings on similar rates applicable from the Pocahontas district on the Norfolk & Western Railway to the same points. It appears that on coal for 82 points reached by the Louisville & Nashville the average through rate is \$1.813 for an average haul of 500 miles; on the Norfolk & Western for 78 points the average rate is \$1.795 for an average haul of 504 miles. The average per ton-mile earning for the Louisville & Nashville is 3.56 mills and for the Norfolk & Western 3.56 mills, both the same. The coke rates to 75 points under the present rates via the Louisville & Nashville yield an average rate of \$2.35 for an average haul of 530 miles, or an average rate per ton-mile of 4.43 mills. On coke for the same points in this territory reached by the Norfolk & Western, the average rate is \$2.308 for an average haul of 515 miles, yielding an average rate per ton-mile of 4.50 mills.

The same competitive conditions which affect the coal rates apply with equal force to the coke rates. It appears that the coke in ques-

tion is in particular competition with coke from Connellsville. It was shown that much so-called by-product coke is now produced at gas plants in the market territories involved. But it also appears that this coke can be sold at a price so low that furnace coke can not compete with it. Such competition is not a factor with which transportation conditions can be concerned, but the competition with Connellsville, as typical of the other furnace coke-producing districts, is a vital circumstance which must be considered.

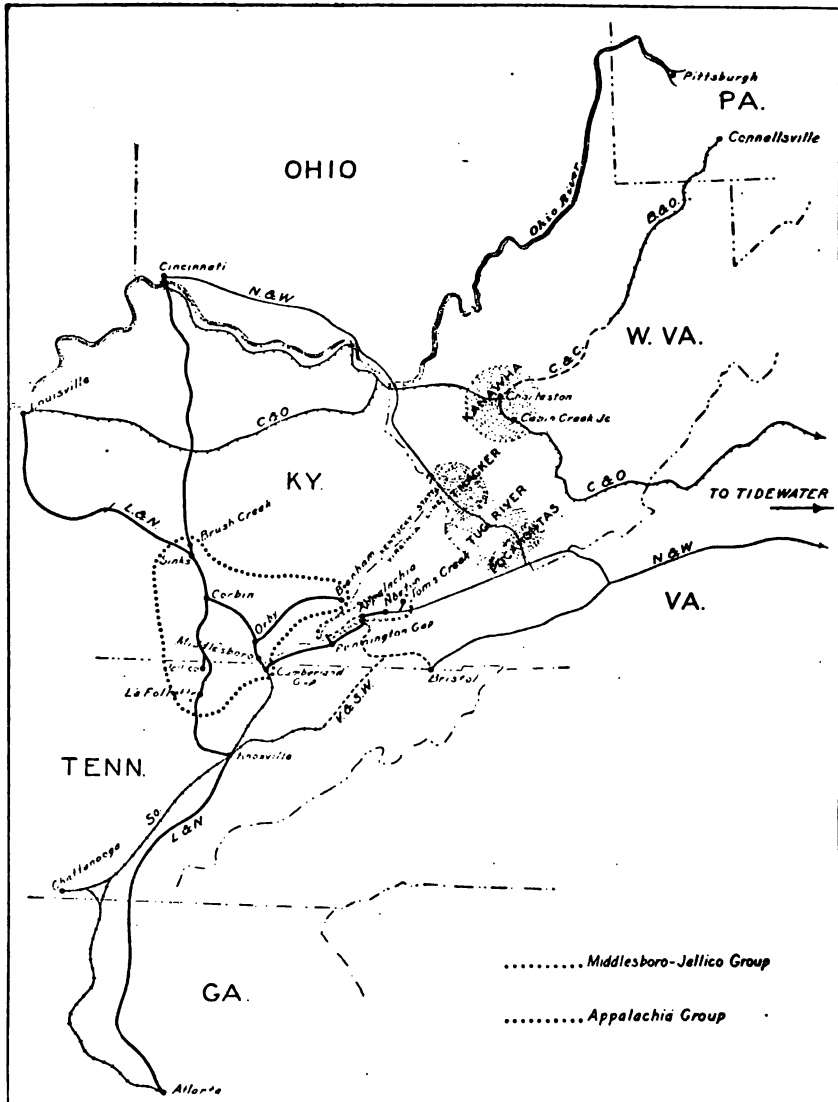
From a consideration of all the facts and circumstances the Commission is of opinion and finds that the respondent has not justified the proposed increases in the coal or coke rates here involved and that reasonable maximum rates on coal for the future will be such rates as do not exceed the rates contemporaneously applied from the Middlesboro-Jellico district to the respective destination points here involved by more than the maximum differentials herein fixed in Investigation and Suspension Docket No. 321; and that the reasonable maximum rate on coke for the future from the Appalachia group to Chicago will be \$2.50 per ton, and to the other points in the territory involved the respondents herein will be expected to establish rates bearing their proper relation to the Chicago rate herein fixed.

INVESTIGATION AND SUSPENSION DOCKET NO. 321.

Following the original decision in Investigation and Suspension Docket No. 71, the Louisville & Nashville filed its tariff, supplement No. 1 to A-12819, which was suspended in Investigation and Suspension Docket No. 321. For a statement of the issues involved on this suspension reference is made to the original report in this case, 30 I. C. C., 635. It should be noted that while Investigation and Suspension Docket No. 71 involved the reasonableness of rates to points on and south of the Ohio River, as well as to points north of the river, Investigation and Suspension Docket No. 321 involves the relationship or adjustment of rates to points north of the river only.

The Appalachia operators were not parties to this case when originally presented, but on this rehearing no distinction in proof was made between Investigation and Suspension Docket No. 71 and Investigation and Suspension Docket No. 321, the two cases having been consolidated, and the Stonega operators, therefore, took part in the rehearing of the issues here involved. These operators did not oppose the imposition of a differential against this territory in favor of Middlesboro, but they contend that any differential should be limited to a maximum of 10 cents. The St. Charles operators, however, reiterate their former position, namely, that the parity of rates which has existed between St. Charles and Middlesboro since 1906 should be continued and that the Commission should modify the 10-cent maximum differential prescribed in its original report herein.

The rates published in the above specified tariffs are stated as joint rates concurred in by the northern lines, which are, therefore, parties to this proceeding; the entire defense was borne by the Louisville & Nashville, the publishing carrier, which is referred to herein as the



respondent. The respondent meets the issues raised by its showing of cost of operation for bringing the traffic from this territory down to Middlesboro. These cost figures are the same as those discussed in Investigation and Suspension Docket No. 71. It should be said that because of their inherent nature, as well as the compelling

circumstance of commercial competition, which appears on this rehearing to be a controlling factor in the rate adjustment involved, these cost figures, while of value, are not conclusive of either the question of the proper grouping of the St. Charles district, or, if grouped with Appalachia, of what the proper differential should be, the two issues into which this case resolves itself.

While the Middlesboro-Jellico group, exclusive of St. Charles, is an extensive one, extending 91 miles from La Follette, Tenn., to Brush Creek, Ky.; from Ages, Ky., 120 miles to Brush Creek; and from Middlesboro 84 miles to Brush Creek, and while the group rate has recently been extended to Benham, Ky., a point just beyond Ages, a distance from Cincinnati of 279 miles, identical with the distance from St. Charles, the most potent circumstance bearing upon the proper grouping of St. Charles is the situation prevailing with respect to other destination points. The accompanying map shows the location of the several districts and their relative position with respect to the market territory here involved.

The following table, compiled from Dewberry Exhibit No. 10, shows the present coal rates from the respective districts to destination points here involved and for comparative purposes the rates to destinations in other territories, together with respective mileages. Rates to Louisville, Lexington, and Cincinnati are also shown. The rates quoted from St. Charles are those in effect before supplement 15 to A-12819 became effective, which carries the present rates:

Coal rates in cents per ton of 2,000 pounds.

To—	From St. Charles.		From Appalachia.		From Middlesboro.		From Kana-wha (group 2).		From Thacker.		From Jellico.		From Harlan.	
	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.
Adrian, Mich.....	527	146	546	172	467	146	306	140	428	140	.....	.....	.....	.....
Detroit, Mich.....	600	145	619	167	540	145	412	140	440	140	.....	.....	.....	.....
Cairo, Ill.....	561	220	579	235	501	220	589	235	613	235	.....	.....	.....	.....
Chicago, Ill.....	565	190	584	205	504	190	527	190	551	190	.....	.....	.....	.....
Columbus, Ohio.....	400	125	419	140	340	125	232	90	260	90	.....	.....	.....	.....
Dayton, Ohio.....	335	125	353	135	274	125	266	125	289	125	.....	.....	.....	.....
Fort Wayne, Ind.....	447	160	466	175	387	160	398	160	435	160	.....	.....	.....	.....
Indianapolis, Ind.....	375	155	394	165	315	155	352	155	376	155	.....	.....	.....	.....
Atlanta, Ga.....	428	170	411	170	298	145	723	285	616	285	308	145	345	135
Birmingham, Ala.....	417	190	400	190	329	140	.....	.....	.....	.....	.....	.....	.....	.....
Chattanooga, Tenn.....	274	115	257	115	186	80	.....	.....	593	255	350	115	387	125
Jackson, Tenn.....	519	210	538	210	461	200	.....	.....	778	365	.....	.....	.....	.....
Memphis, Tenn.....	583	170	602	170	495	160	.....	.....	813	245	.....	.....	.....	.....
Nashville, Tenn.....	393	145	412	145	292	135	.....	.....	.....	.....	.....	.....	.....	.....
Savannah, Ga.....	483	210	466	210	558	210	717	250	682	250	602	210	639	220
Charlotte, N. C.....	289	225	272	225	330	225	455	245	402	245	345	225	642	235
Columbia, S. C.....	340	225	323	225	346	225	564	245	509	245	361	225	597	235
Spartanburg, S. C.....	289	195	263	195	253	195	531	265	479	265	527	197½	564	207½
Louisville, Ky.....	264	85	279	85	215	75	.....	.....	.....	.....	.....	.....	.....	.....
Lexington, Ky.....	218	130	233	130	169	120	.....	.....	.....	.....	.....	.....	.....	.....
Cincinnati, Ohio.....	279	100	294	100	230	90	.....	.....	.....	.....	.....	.....	.....	.....

¹ Group 2.

It appears that to points on and south of the Ohio River, as well as to southeastern and southern destinations, St. Charles is grouped with Appalachia.

The situation of the St. Charles operators is this: They are mining their coal from a 3½-foot vein, which, because of this physical fact, is a more expensive operation than that of their competitors in the Stonega or Wise county district, where the vein is much thicker. The difference in cost of operation is estimated at from 25 to 30 cents per ton. The St. Charles coal, however, is a high-grade domestic coal with which the Stonega coal can not compete on equal terms. In making their domestic coal, however, a quantity of small size coal is produced as a by-product. This by-product in the form of nut and slack coal is about 40 per cent of the total volume of the coal produced and is not suitable for domestic purposes. The domestic coal is marketed chiefly in the south and southeast. A market for the nut and slack coal in competition with the run of mine steam coal from Stonega is not available, however, in this same territory since the steam coal users there are not equipped to burn nut and slack coal, it requiring stokers to make this kind of coal usable for steam purposes. The plants north of the Ohio River are equipped to burn nut and slack coal. This by-product is, therefore, run through a washery which makes of it a fine steam coal, and 95 per cent of this product is now marketed north of the river.

In this northern territory the washer coal being of a superior grade is not in direct competition with the Stonega coal, although the latter is a good steam and gas coal, but the St. Charles operators here meet the competition of their Jellico competitors who produce practically the same kind of coal under like conditions of operation. The Middlesboro coal is produced under more favorable operating conditions than the St. Charles coal, the difference amounting to about 10 cents per ton, but as with the Stonega coal the quality is not as good. Again the St. Charles coal because of its nature does not come into competition with the Ohio or Indiana coals which are used for other purposes than that to which the St. Charles coal is adapted.

The movement of this tonnage from the washery in 1914 was as follows: To points local to the Louisville & Nashville, 2,934 tons; to Cincinnati, 28,984 tons; to points beyond Cincinnati, 33,614 tons, or a total of 65,530 tons out of the entire production of 99,808 tons passed over the Louisville & Nashville lines to the territory here involved. The remainder moved south and to local plants. In addition to this movement of washery coal there is a movement of domestic coal and unwashed nut and slack coal of almost equal volume to this territory.

The operators in this district uniformly testify that they are operating at a loss and have been for some time. This condition appears to be tolerated because of the hope of improvement and to preserve an organization, so that they will be prepared to meet the demands of a rising market if their hopes are realized. It should be noted that the deficit from operation is attributed to conditions of the market rather than to transportation charges.

They also testified that if the rates from St. Charles are increased by reason of a change in grouping these operators will be put out of business, as far as the markets north of the Ohio River are concerned. This opinion testimony is not supported by any convincing facts or circumstances. In the cross-examination of the witnesses who so testified the respondent asked certain questions concerning the cost of the production of coal and coke, which the operators refused to give on the ground that these matters were in the nature of trade secrets. The respondent therefore moved to strike all this direct testimony from the record, and a ruling on its motion was pressed in the presentation of the case.

Testimony as to the effect an increase in rate will have on the business of the shippers involved is always relevant, but should be established by direct evidence as distinguished from opinion testimony. The mere statement of an opinion that a certain increase in rates will put shippers out of business is not conclusive, since this fact can be established by direct proof of actual conditions encountered or of instances where the increase would have had such an effect, or it might be proved by a showing of what it costs to produce the commodity shipped or the margin of profit on which the operation is conducted, and in many other ways. This Commission may not require witnesses to testify against their will concerning the cost of production of the articles moving in interstate commerce. In view of what has been said with regard to the character of the testimony in this record on the point in question, a ruling excluding this testimony is not necessary.

It is contended by the St. Charles operators that their operations were begun under a tacit understanding that a certain scale of rates would be accorded them which would place them on a parity with their competitors in the Thacker district and the Kanawha district, as well as in the Middlesboro-Jellico district, and that it is unreasonable for the respondent in violation of this understanding or contractual obligation to increase its rates. This contention is contrary to principles that are so well settled that the discussion or citation of authority is not necessary.

It appears that the disadvantage, if any, under which the St. Charles district labors with respect to Stonega, on the one hand, or

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Middlesboro-Jellico district, on the other, is a natural or physical one which it is not the function of this Commission to neutralize by requiring the carriers to accord a corresponding rate advantage. No sufficient reason appears why St. Charles should be grouped with Appalachia, Norton, and Toms Creek in the making of rates to the south or southeast and taken out of this group when the destinations involved are north of the Ohio River. The grouping ordered in *Black Mountain Coal Land Co. v. Southern Ry. Co.*, 15 I. C. C., 286, should not be departed from in the disposition of the present case.

The only reason advanced why this exception should be made is that the differential of 10 cents existing with respect to Kentucky destinations should vanish with the increasing distance and that the distances north of the Ohio River being greater, the differential should consequently disappear.

In fixing the differential, the Commission is mindful of the existing differential of 10 cents to Kentucky points, which, it should be noted, was formerly 15 cents. The greater haul incident to the St. Charles traffic is measured by the distance from Pennington to Middlesboro of 44 miles, or, if considered as a part of the Appalachia group, by the distance from Appalachia to Middlesboro of 64 miles. From a consideration of all the facts and circumstances the Commission is of opinion and finds that the St. Charles district shall be included in a group which shall extend from St. Charles on the west to Toms Creek on the east, hereinafter referred to as the Appalachia group, and that the rates on coal applicable from such group shall not exceed the rates contemporaneously in effect from the Middlesboro-Jellico district to the same destination points by a differential of more than 15 cents per ton.

Incidental to the matter of the grouping of the regions involved is the question of what rate shall be applied from the Stonega operations and independent operations located on the Interstate Railroad. It is urged that since the traffic from the Stonega district originates on the Interstate Railroad a two-line haul is involved as compared with a one-line haul from the St. Charles district, and in this connection we said in the original *Stonega Case*, 23 I. C. C., 24:

The case of *Black Mountain Coal Land Co. v. Southern Ry. Co.*, 15 I. C. C., 286, is cited to support complainant's contention. That case involved rates on coal and coke from this same general territory. The Commission condemned as unreasonable a charge of 10 cents more per ton on shipments of coal from the St. Charles mines than from mines in Appalachia to the same general destination. But St. Charles and Appalachia are both on the same railroad, and that fact was not only recognized by the Commission but was stated as one of the grounds for the conclusion reached.

In the *Black Mountain Case* cited the points mentioned were served by the Virginia & Southwestern Railroad, a subsidiary of the South-

ern Railway. No coal is produced at Appalachia, as heretofore noted, but by reason of its membership in the Appalachia Terminal Association the Virginia & Southwestern originates coal in the Stonega district served by the Interstate Railroad, which it brings to its own rails at Appalachia, as well as originating coal on its own rails at St. Charles. The Appalachia Terminal Association is composed of the Interstate Railroad and the Virginia & Southwestern, and is an arrangement whereby their assembling facilities are pooled for purposes of originating the traffic destined over their connecting roads. In this association the Louisville & Nashville was invited to participate and is still eligible as a member and under its terms would be able to originate the traffic from Stonega here involved.

The mere fact that one haul is a two-line haul as distinguished from another haul which is a one-line haul does not in and of itself justify a higher charge for the two-line haul. The first case before the Commission in which a distinction was made in charge between a two-line haul and a one-line haul was *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160; 23 I. C. C., 656, 661, where in fixing a distance scale of rates in a large territory the carriers were permitted to make a higher charge for the traffic moved by a two-line haul than where it moved by a one-line haul for distances less than 500 miles. This case has mistakenly been advanced as authority for the principle that as a matter of law where any rate situation involves a two-line haul as related to a one-line haul, that a higher charge for the former may be made. The reasonableness of a higher charge for a two-line haul than for a one-line haul is a question of fact rather than a question of law and depends solely on the facts and circumstances made to appear which show an increased cost or some other fact or circumstance which would warrant a higher charge. This has been pointed out heretofore and reiterated in *Sheridan Chamber of Commerce v. C., B. & Q. R. R.*, 26 I. C. C., 638, 647; 28 I. C. C., 250.

The present case is quite illustrative of the point. It is here shown that because of the fact that the traffic was originated by the Interstate Railroad and then delivered to the Louisville & Nashville, certain rebilling at Appalachia is necessary, and that certain additional yardmen and trainmaster's expenses which it is necessary for the Interstate Railroad to incur would not be required if the Louisville & Nashville operated over these tracks and originated the traffic itself. The additional cost apportioned to coal for the two years involved amounted to approximately \$13,000 per annum. The coal traffic on which this computation is based amounted to approximately 1,300,000 tons per annum, or a cost per ton of coal of 1 cent. It should be noted that this increased cost does not in any wise accrue to the Louisville & Nashville. It is a charge against the traffic as a whole.

The facts are, therefore, that the two-line haul is 1 cent per ton more expensive than the one-line haul; but as was found in the *Sheridan Coal Cases*, *supra*, the terminal conditions are simple, and no large investment of capital is employed to effect the interchange of this traffic, and the additional expense of a two-line haul over a one-line haul of 1 cent is so slight that in the general group rate adjustment here being made and under the special circumstances here prevailing should not be reflected in the rate.

It should again be noted that prior to March 17, 1903, the Appalachia rate was applied from Stonega and Dorchester, and it should also be noted that the Southern Railway in its tariff I. C. C. A-5700 applies the Appalachia rate from Stonega and all points in the so-called Appalachia group. The same shall be the adjustment in the present case, and the rates applicable from the operations on the Interstate Railroad shall be the group rates applicable from the Appalachia group fixed herein.

DIVISIONS.

From the course that the testimony took on the rehearing it is understood that the request for the fixing of proper divisions of the through rates involved, between the respondent and the carriers north of the Ohio River, has been abandoned. The traffic official of the respondent testified that in his opinion the divisions resulting to the lines north of the Ohio River were now low, and that the present divisions are the same as received by those lines on like traffic for similar hauls in connection with other originating carriers from other producing fields, and even less than the revenue they derive from like traffic originating on their own lines in or adjacent to the market district here concerned. On the strength of this testimony the lines north of the Ohio River, other than the Baltimore & Ohio Southwestern, offered no further testimony. The testimony of the Baltimore & Ohio Southwestern substantiates that of the respondent's witness, and the question of proper divisions will not be discussed further.

INVESTIGATION AND SUSPENSION 625 AND INVESTIGATION AND SUSPENSION 633.

Since these cases, Investigation and Suspension 625 and Investigation and Suspension 633, have been consolidated with Investigation and Suspension 71 and Investigation and Suspension 321, and since they involve practically the same rates, no particular discussion of them is necessary. To avoid confusion, the tariffs under suspension in these cases will be ordered canceled.

No. 8094.
WILLIAMS STAVE COMPANY
v.
LOUISIANA RAILWAY & NAVIGATION COMPANY.

Submitted October 21, 1915. Decided May 19, 1916.

Charges collected for the transportation of 76 carloads of stave bolts from Louisiana points to Alexandria, La., for milling and reshipment over defendant's line to interstate destinations, found to have been unreasonable. Reparation awarded.

Emerson Bentley for complainant. •
E. C. D. Marshall for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of staves at Alexandria, La. By complaint, filed June 12, 1915, it alleges that the rate charged by defendant for the transportation of 76 carload shipments of stave bolts from certain Louisiana points on its line to Alexandria, where the bolts were milled and reshipped as staves to interstate destinations, was unreasonable. Reparation is asked.

The shipments aggregated 4,906,660 pounds and moved to Alexandria over defendant's line between July 1, 1914, and November 5, 1914. Charges were collected in the sum of \$2,944 at a rate of 6 cents per 100 pounds. The bolts were manufactured into staves at Alexandria and reshipped over defendant's and connecting lines to Rochester, N. Y., and Constable Hook, N. J.

The following table shows the points of origin, the distances to Alexandria, the number of carloads shipped from each point, the aggregate weight of the shipments from each point, and the rates asked, rates stated in cents per 100 pounds:

To Alexandria from—	Dis- tance.	Car- loads.	Weight.	Rates asked.
	<i>Miles.</i>		<i>Pounds.</i>	<i>Cents.</i>
Belle-Idau.....	23	2	124,800	2.0
Bijou.....	19	19	1,174,600	2.0
Colfax.....	25	2	148,200	2.0
Crews.....	45	2	145,100	2.5
Atlanta.....	47	23	1,378,180	2.5
Montgomery.....	40	13	901,000	2.5
Emden.....	43	4	241,300	2.5
Verda.....	39	1	72,600	2.5
Aloha.....	31	4	270,300	2.5
Wilhelm.....	81	3	207,900	3.5
Seest.....	100	3	242,680	3.5

For several years defendant has maintained to Alexandria from points on its line net distance rates on logs, stave bolts, and other forest products to be manufactured at Alexandria and subsequently reshipped over its line in the form of products. These rates are 2 cents per 100 pounds for 25 miles and under; 2.5 cents for 50 miles and over 25 miles; 3 cents for 75 miles and over 50 miles; 3.5 cents for 100 miles and over 75 miles; 4 cents for 125 miles and over 100 miles. They can not be used in waybilling charges to Alexandria. Defendant's tariff provides that shipments shall be waybilled at 6 cents per 100 pounds and that on presentation of satisfactory evidence of manufacture and reshipment over its line the difference between the 6-cent rate and the net rates will be refunded.

Prior to July 1, 1914, the net rates applied on "rough staves, stave bolts, split staves, sawed staves, and logs" for manufacture into "cooperage, cooperage stock, finished staves, and lumber." A further provision was that the outbound tonnage should not be less than 33 $\frac{1}{3}$ per cent of the inbound tonnage. In a tariff effective July 1, 1914, defendant undertook to define the product of rough bolts and provided that the net rates would apply when "rough bolts" were shipped in and finished stave bolts were shipped out, with the further provision that the outbound tonnage should not be less than 40 per cent of the inbound tonnage. Complainant's shipments moved while this tariff was in force. Defendant's tariff, effective November 5, 1914, and still in force, provides that the net rates will apply when the articles shipped in are "bolts and logs" and the articles shipped out are "staves" and that the outbound tonnage shall not be less than 30 per cent of the inbound tonnage.

The only product of a rough stave bolt is a stave, and defendant states that the description of the article to be shipped out during the period when complainant's shipments moved was due to an error in tariff publication, and that the same is true of the provision that the outbound tonnage should not be less than 40 per cent of the inbound tonnage; that it is impossible to obtain more than 30 per cent of the finished product from the rough material; that the 6-cent rate was unreasonable; and that it is willing to make reparation on basis of the net rates asked by complainant. Complainant's outbound shipments all moved within 12 months from the dates of the original inbound freight bills and the outbound shipments equaled 30 per cent or more of the inbound tonnage.

A transit provision which, through error or misunderstanding, is withdrawn or becomes inoperative for a short period and is subsequently restored and continued in effect can not be regarded in the same light as a newly established transit arrangement and does

not come within our rule against awards of reparation that are tantamount to the retroactive application of such provisions.

We find that the charges collected on the shipments involved from the points of origin to Alexandria were unreasonable to the extent that they exceeded the charges that would have accrued at rates of 2 cents per 100 pounds from Belledeau, Bijou, and Colfax, 2.5 cents per 100 pounds from Crews, Atlanta, Montgomery, Emden, Verda, and Aloha, and 3.5 cents per 100 pounds from Wilhelm and Soest; that complainant made the shipments as described and paid and bore charges thereon at the rates herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$1,744.68, with interest from November 30, 1914. An order awarding reparation will be entered, but as the rates found reasonable have applied on stave bolts manufactured and reshipped as staves since November 5, 1914, no order need be entered for the future.

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No. 7829.

HEIDER MANUFACTURING COMPANY ET AL.

v.

CHICAGO GREAT WESTERN RAILROAD COMPANY ET AL.

Submitted September 23, 1915. Decided May 19, 1916.

Westbound rates on agricultural implements from Carroll, Iowa, and on iron water gates from Oskaloosa, Iowa, to Omaha, Nebr., in excess of eastbound rates contemporaneously applicable on the same commodities from Omaha to Carroll and to Oskaloosa, respectively, not found to have been unreasonable or unduly prejudicial. Complaint dismissed.

F. W. Knoche for complainants.

Fred P. Carr for Chicago Great Western Railroad Company.

E. R. Puffer for Chicago, Burlington & Quincy Railroad Company.

C. C. Wright and *Robert H. Widdicombe* for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant Heider Manufacturing Company is engaged in making agricultural implements at Carroll, Iowa; complainant Iowa Valve Company, in the manufacture of hydrants and water gates at Oskaloosa, Iowa. Both companies are corporations. By complaint, filed March 11, 1915, they allege that the carload rates charged by defendants on agricultural implements shipped from Carroll to Omaha, Nebr., between January 13, 1913, and November 23, 1914, and the less-than-carload rates charged on iron water gates shipped from Oskaloosa to Omaha in September, 1913, were unreasonable and unjustly discriminatory, in violation of sections 1 and 3 of the act. Reparation is asked and the establishment of just and reasonable rates. Claims covering all of the shipments except two on January 10, 1914, and November 24, 1914, respectively, were filed with the Commission informally on May 20, 1914, June 29, 1914, and August 24, 1914. The complaint is based on the fact that the westbound rates were and are materially higher than the eastbound rates between the same points.

The shipments of agricultural implements were moved by the Chicago Great Western Railroad or the Chicago & North Western Railway; the water gates by the Chicago, Burlington & Quincy Railroad. The Iowa classification, which governed, rated agri-

cultural implements class A, and charges were collected at a through class A rate of 13.4 cents per 100 pounds. The legal rate of the Chicago & North Western was the alternative class A rate of 12.8 cents, and the shipments moved by that line were overcharged 0.6 of a cent per 100 pounds. The Iowa classification rated iron water gates fourth class, and charges were collected on these shipments at the through fourth-class rate of 24.2 cents per 100 pounds. The eastbound rate on agricultural implements, carloads, from Omaha to Carroll was and is 8.6 cents by both the Chicago Great Western and Chicago & North Western, while the eastbound rate of the Chicago, Burlington & Quincy on iron water gates from Omaha to Oskaloosa was and is 20.5 cents.

Normally rates between the same points should be the same in both directions. In many instances they are the same. Formerly the present westbound rates obtained in both directions between Carroll and Omaha and between Oskaloosa and Omaha on both agricultural implements and iron water gates. About 1905 the Chicago, Rock Island & Pacific Railway Company, on representations of commercial interests at Omaha and in order to put Omaha jobbers on a rate parity with jobbers at Council Bluffs, whose rates westbound to points in Nebraska, Kansas, and Wyoming were the same as the rates from Omaha, published lower rates on all classes eastbound than westbound between Omaha and interior Iowa points, including Carroll and Oskaloosa. Defendants thereupon published lower eastbound class rates from Omaha to Carroll and Oskaloosa based on the Iowa distance tariff for the distance of the short line from Council Bluffs to destinations, plus 5 miles. Defendants offer no evidence of different transportation conditions east and west other than that the eastbound tonnage was heavier than the tonnage westbound in the proportion of two or three to one. Complainant cites a rate of 18.5 cents plus \$5 per car on agricultural implements from Waterloo and Aladdin, Iowa, to Omaha, but defendant Chicago Great Western explains that this rate was made to meet the rate of the Illinois Central which operated the short line over its own bridge.

The evidence fails to show that the rates assailed were intrinsically unreasonable. The length of time that they have prevailed, the bases therefor, and defendants' rate comparisons tend to show on the contrary they were reasonable. The comparisons include fourth-class rates as follows: Des Moines, Iowa, to St. Joseph, Mo., 193 miles, 26 cents; Des Moines to Lincoln, Nebr., 229 miles, 31 cents; Holdredge, Nebr., to Council Bluffs, Iowa, 206 miles, 36 cents; Oxford, Nebr., to Council Bluffs, Iowa, a distance a little less than from Oskaloosa to Omaha, 37 cents; interstate mileage scale for the distance from Oskaloosa to Omaha, 230 miles, 34 cents.

Only vague and uncertain evidence appears of unjust discrimination. It is not disclosed that agricultural implements and iron water gates were or are manufactured at Omaha; or that there were or are actual shipments of these articles from Omaha to Carroll and Oskaloosa. Westbound shipments into Omaha are made by manufacturers; eastbound shipments, if any, by jobbing merchants; and it does not appear that the two movements are or could be competitive. A witness for one of the complainants states that his competitors at Omaha were jobbers to whom he sold the articles. Defendants suggest that competition may be encountered at Chicago, Ill., St. Louis, Mo., and St. Paul and Minneapolis, Minn., from which points rates to Omaha are on a higher basis than from the points of origin involved. Our conclusions relative to the through rates render it unnecessary to review the testimony with reference to the bridge tolls included in them.

We find that the rates assailed are not shown to have been unreasonable or unduly prejudicial, and an order will be entered dismissing the complaint. But the overcharges found should be refunded with interest.

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No. 8220.

AMERICAN REFINING COMPANY

v.

TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted December 17, 1915. Decided May 19, 1916.

Reparation awarded on account of unreasonable charges collected by defendants for the transportation of a carload of petroleum cylinder stock from Okmulgee, Okla., to Amesville, La.

Sol. H. Kauffman for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in refining oil at Okmulgee, Okla. By complaint, filed August 2, 1915, it alleges that the rate of 70 cents per 100 pounds charged by defendants for the transportation of a carload of oil from Okmulgee to Amesville, La., for barreling in transit at Amesville and reshipment to New Orleans, La., for export, was unjust and unreasonable. Reparation is asked.

Complainant delivered a tank car of petroleum cylinder stock to the St. Louis & San Francisco Railroad Company at Okmulgee on February 16, 1914, consigned to itself at New Orleans with instructions to "stop at Amesville for barreling." The shipment weighed 52,998 pounds and was delivered to complainant at its plant at Amesville by the Texas & Pacific Railway. The record does not clearly show the intermediate carriers participating in the transportation. Charges were prepaid in the sum of \$111 at a joint through export commodity rate of 20 cents per 100 pounds from Okmulgee to New Orleans, plus a charge of \$5 for barreling in transit at Amesville. While the car was at complainant's plant at Amesville and before the oil could be barreled the outlet valve of the tank was opened by some unknown person and the entire contents leaked to the ground, causing a complete loss.

The tariff naming the export rate of 20 cents from Okmulgee to New Orleans, which carried barreling in transit at Amesville, further provided as follows:

If any portion of a shipment intended for export is not reshipped within six months as provided in rule 6, item 800-A, the regular domestic carload rates to Amesville or Harvey will be applied.

Subsequently, August 19, 1914, additional charges in the sum of \$269.99 were collected by the Texas & Pacific Railway based on the domestic joint through class rate of 70 cents from Okmulgee to Amesville, making the total charges collected \$380.99.

Complainant contends that the provision quoted did not apply to the shipment in controversy for the reason that the oil was accidentally lost before it could be barreled, and that additional charges should therefore not have been assessed. The 70-cent rate charged was legally applicable to the shipment, and on this rate the total charges would have amounted to \$370.99. The shipment was overcharged \$10.

Complainant further contends that the rate charged was unreasonable to the extent that it exceeded 33 cents per 100 pounds, the domestic carload commodity rate contemporaneously applicable from Okmulgee to New Orleans. New Orleans is about 5 miles more distant from Okmulgee by the route of movement than Amesville, and Amesville is directly intermediate. The 33-cent rate to New Orleans departed from the long-and-short-haul rule of the fourth section, but the departure was protected by an appropriate application, which was not set for hearing with the complaint. Effective March 19, 1915, after the shipment involved had moved, defendants established a domestic commodity rate of 33 cents on petroleum cylinder stock in carloads from Okmulgee to Amesville. But departure from the long-and-short-haul rule does not prove the rate to the intermediate point unreasonable and the subsequent reduction of the rate also is insufficient.

The carload rate applicable interstate on petroleum cylinder stock from New Orleans to Amesville was 10 cents per 100 pounds, minimum 30,000 pounds. This rate, added to the rate of 33 cents from Okmulgee to New Orleans, made a through rate from Okmulgee to Amesville of 43 cents per 100 pounds. The joint through rate of 70 cents from Okmulgee to Amesville, therefore, exceeded the rate to New Orleans plus the rate from New Orleans back to Amesville by 27 cents per 100 pounds.

We find that the rate assailed was unreasonable to the extent that it exceeded a rate of 43 cents per 100 pounds; that complainant made the shipment as described and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and

that it is entitled to reparation in the sum of \$153.10, with interest from August 19, 1914, which sum includes the \$10 overcharge found to have been made. An order requiring reparation by the St. Louis & San Francisco Railroad Company and the Texas & Pacific Railway Company will be entered, but the other carriers that participated in the transportation may join these defendants in making reparation. As a rate lower than that herein found reasonable has been in effect for over a year, no order for the future will be entered.



No. 8280.

MONROE GROCER COMPANY

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY ET AL.

Submitted December 1, 1915. Decided May 19, 1916.

Reparation awarded on account of unreasonable charges collected by defendants for the transportation of a carload of loaded shells and metallic cartridges from Bridgeport, Conn., to Monroe, La.

J. C. Smith for complainant.

F. B. Clarke for St. Louis, Iron Mountain & Southern Railway Company and receiver.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the grocery business at Monroe, La. By complaint, filed August 30, 1915, it alleges that the rate of 80 cents per 100 pounds charged by defendants for the transportation of a carload of loaded shells and metallic cartridges from Bridgeport, Conn., to Monroe, La., in December, 1913, was unreasonable to the extent that it exceeded 65 cents per 100 pounds. Reparation is asked.

The shipment weighed 30,459 pounds and moved from Bridgeport by way of the New York, New Haven & Hartford Railroad to New York, N. Y., and the Southern Pacific Company-Atlantic Steamship lines, the Louisiana Railway & Navigation Company, and the St. Louis, Iron Mountain & Southern Railway, thence to destination. Freight charges were collected in the sum of \$243.74 at a carload rate of 80 cents per 100 pounds, minimum 30,000 pounds.

The constructive rail-water-and-rail mileage from Bridgeport to Monroe is placed at 1,088 miles and on this basis the rate charged earned 14.7 mills per ton-mile. The 65-cent rate asked would earn 11.9 mills. In *Neilson Co. v. La. Ry. & Nav. Co.*, 23 I. C. C., 254, we found that a reasonable rate for the transportation of small arms ammunition in carloads from Bridgeport to Alexandria, La., should not exceed 65 cents per 100 pounds, the movement being by rail from Bridgeport to Philadelphia, Pa., thence by the Philadelphia & Gulf Steamship line to New Orleans, La., and thence by rail to destination. In *Monroe Hardware Co. v. N. Y., N. H. & H. R. R. Co.*, Docket No. 7076, unreported, we held, following the *Neilson Case*, that the rate to Monroe from Bridgeport by way of the Philadelphia & Gulf line should not exceed 65 cents.

It appears that Monroe, Alexandria, and Shreveport, La., are usually given the same basis of rates from Atlantic seaboard ports and that in September, 1912, the carriers voluntarily extended the 65-cent rate applicable by way of the Philadelphia & Gulf line to Monroe. The Southern Pacific Company-Atlantic Steamship lines was not a party to the cases cited and did not participate in the 65-cent rate to Monroe until April 1, 1915.

The St. Louis, Iron Mountain & Southern Railway was the only defendant represented at the hearing. Its representative admitted that the rate charged should not have exceeded the rate contemporaneously applicable from Bridgeport to Shreveport, which is a more distant point. This defendant expresses willingness to join the other defendants in making reparation on the basis sought.

We find that the rate complained of was unreasonable to the extent that it exceeded 65 cents per 100 pounds; that complainant made the shipment as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that it was damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$45.69, with interest thereon from January 13, 1914. An order awarding reparation will be entered, but as the rate found reasonable has been in effect for more than a year, no order will be entered for the future.

No. 8129.

NATIONAL LEAGUE OF COMMISSION MERCHANTS OF
THE UNITED STATES ET AL.

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted November 29, 1915. Decided May 19, 1916.

Estimated weight of 120 pounds per standard crate for shipments of cabbages from Coleman and Sumterville, Fla., to New York, N. Y., found unreasonable, and reasonable estimated weight prescribed for the future. Reparation awarded.

R. S. French and C. R. Scharff for complainants.

Charles D. Drayton for Atlantic Coast Line Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant National League of Commission Merchants of the United States is an Illinois corporation, with its principal office in New York, N. Y. Complainants Titus Brothers are members of the league, doing business in New York. The complaint, which was filed June 28, 1915, alleges that the charges collected by defendants for the transportation of 33 carloads of cabbages in crates, shipped from Coleman and Sumterville, Fla., to New York, consigned to Titus Brothers, during February and March, 1914, and January, February, and March, 1915, were unreasonable and excessive in that they were based on an estimated weight of 120 pounds per standard crate 12 inches by 20 inches by 36 inches, instead of on the basis of actual weights. Reparation is asked for Titus Brothers and a reasonable estimated weight per standard crate to be used when the actual weight can not be determined.

Coleman and Sumterville are local stations on the Seaboard Air Line Railway about halfway down the Florida peninsula. The shipments, 33 in number, moved: Seaboard Air Line to Richmond, Va.; Richmond, Fredericksburg & Potomac Railroad and Washington Southern Railway to Washington, D. C.; Pennsylvania lines to destination. Charges were collected in the total sum of \$7,609.89 on a total estimated weight of 951,240 pounds at a rate of 80 cents per 100 pounds. Complainants do not attack the rate charged, nor do they seriously contest the use of estimated weights. The gravamen of

their complaint is that the estimated weight of 120 pounds is too high, and that it should not exceed 110 pounds.

A truckman in Titus Brothers' employ supervised the weighing of a number of crates from each of the shipments involved as soon as the shipments were unloaded at the pier in New York. Truck scales were used which showed average weights per crate per shipment ranging from 96 pounds to 115 pounds. The entire shipments were not weighed because they were sold at the pier and could not be weighed by 7 o'clock in the morning, when the purchasers desired delivery. Since the entire shipments were not weighed charges based on the weights per crate per car suggested by complainants would also be based on estimated weights. Complainants admit, moreover, that shipments of cabbage from and to the territory involved generally lose about 3.5 per cent of their original weight in transit. Three of the shipments involved, that moved during February, 1915, were weighed by the Southern Weighing and Inspection Bureau at West Jacksonville, Fla., at Titus Brothers' request. The net weights reported were 25,300 pounds, or 105.4 pounds per crate; 26,600 pounds, or 110.8 pounds per crate; and 25,900 pounds, or 107.9 pounds per crate. The shipment weighing 25,900 pounds contained 15 baskets of romaine. Test weighings by an agent of defendant Seaboard Air Line Railway at Coleman during the period from February 10 to February 18, 1915, showed weights ranging from 85 pounds per crate to 106 pounds, and an average of 100.2 pounds per crate for 25 crates. A shipment from Coleman to Greensboro, N. C., on February 22, 1915, and another to Danville, Va., on the same date are shown to have been billed at an actual weight of 100 pounds per crate. In an affidavit offered at the hearing, one of complainants' witnesses at the hearing gives weights on standard barrel crates weighed during February and March, 1915, that range from 89 pounds to 104 pounds. The term barrel crate is not described. Another witness states that the standard slatted crate now in general use weighs about 15 pounds, and that he would never guarantee to purchasers more than 80 pounds of cabbage per crate.

Defendants contend that the flathead cabbages shipped from the Coleman district of Florida, which includes Sumterville, are not representative of the entire state crop; that shipments during January and February are not fairly representative of the entire season from January to May; and that some shippers pack more cabbages into a standard crate than others. The more mature cabbages shipped during the last half of the season are said to weigh more than the less mature cabbages shipped during the first half of the season. Complainants admit that the earlier cabbages are a little lighter than

the later, but state that flathead cabbages constitute about 99 per cent of the total crop in the Coleman district, which in turn constitutes about 50 per cent of the total crop in the state. Defendants submit the following actual weights of shipments of cabbages from Florida, compiled from the records of the Southern Weighing and Inspection Bureau; weights stated in pounds:

Season.	Crates.	Total weight.	Average per crate.	Season.	Crates.	Total weight.	Average per crate.
	<i>Number.</i>	<i>Pounds.</i>	<i>Pounds.</i>		<i>Number.</i>	<i>Pounds.</i>	<i>Pounds.</i>
1907.....	480	60,900	127	1913.....	457	55,444	121.3
1908.....	400	49,000	122.5	1914.....	8,559	1,022,111	119.4
1909.....	46,133	5,572,015	121	1915.....	235	28,029	119.3
1910.....	1,213	144,388	119.4				
1911.....	81,715	9,861,637	120.7	Total.....	139,709	16,858,089	120.7
1912.....	517	61,505	119				

These weights were taken at various points in Florida, including Coleman. The average weights per crate recorded at Coleman were: March, 1909, 118 pounds; April, 1909, 126 pounds; January, 1910, 110 pounds; February, March, and April, 1911, 114 pounds; March, 1912, 120 pounds; an average of 117.6 pounds. Defendants state that the cabbages shipped from the Coleman district during the 1914 and 1915 seasons were exceptionally light, in that the heads were fluffy, but complainants' Florida shippers deny the assertion. Complainants state that the standard crate now in general use weighs only one-half as much as the solid crate formerly used.

Shippers of cabbages from the Coleman district are entitled to estimated weights fairly adjusted to the actual weights of their shipments. Since one-half of the entire state cabbage crop is raised in the Coleman district, defendants can not reasonably determine the estimated weight for shipments from Florida with regard exclusively to conditions in other parts of the state. Conditions in the Coleman district demand a lower estimated weight than 120 pounds per standard crate, and we find that 120 pounds per standard crate was and for the future will be unreasonable to the extent that it exceeded or may exceed 115 pounds per standard crate. We further find that the shipments involved were made to complainants Titus Brothers as described; that Titus Brothers paid and bore charges thereon on the basis of the estimated weight per standard crate herein found unreasonable; that they were damaged to the extent that the charges paid exceeded the charges that would have accrued on the basis of the estimated weight per standard crate herein found reasonable, and that they are entitled to reparation, with interest.

Complainants Titus Brothers accordingly should prepare a statement showing as to each shipment on which reparation is claimed

the date of shipment, points of origin and destination, car number and initials, route, number and kind of crates included, weight and rate applied, charges collected and date of payment, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainants and verified by defendants, we will consider the entry of an order awarding reparation.

An appropriate order for the future will be entered.

No. 8189.

FORBES MANUFACTURING COMPANY

v.

LEHIGH VALLEY RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS

Nos. 1779, 1952, AND 2060.

Submitted November 17, 1915. Decided May 19, 1916.

Rate of \$1.13 per 100 pounds charged for the transportation of a less-than-car-load shipment of iron wire cloth from Cortland, N. Y., to Hopkinsville, Ky., found unreasonable to the extent that it exceeded the aggregate of intermediate rates to and from Evansville, Ind. Reparation denied because complainant is not shown to have been damaged by the rate charged, and complaint dismissed.

L. F. Deininger and *L. W. Perkins* for complainant.

D. M. Goodwyn for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the manufacture and sale of various articles at Hopkinsville, Ky. By complaint, filed July 28, 1915, it alleges that the joint rate of \$1.13 per 100 pounds charged by defendants for the transportation of 125 rolls of iron wire cloth shipped from Cortland, N. Y., to Hopkinsville, January 14, 1913, was unreasonable and in violation of the fourth section in that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Evansville, Ind. Reparation is asked. The claim was presented to the Commission informally November 14, 1914.

39 I. C. C.

The shipment weighed 3,480 pounds, and charges were collected at the rate assailed in the sum of \$39.32. The rates applicable were the third-class rate of 39 cents per 100 pounds from Cortland to Evansville and the second-class rate of 43 cents per 100 pounds from Evansville to Hopkinsville, which aggregated 82 cents per 100 pounds.

Those portions of Fourth Section Applications No. 1779, filed by C. C. McCain, agent; No. 1952, filed by the Louisville & Nashville Railroad Company; and No. 2060, filed by J. F. Tucker, agent, in which authority is asked to charge greater compensation for the transportation of iron wire cloth from Cortland, N. Y., to Hopkinsville, Ky., as a through route, than the aggregate of the intermediate rates to and from Evansville, Ind., or other intermediate points, were set for hearing with the complaint.

The representative of the Louisville & Nashville Railroad stated that it was not defendants' intention to justify the departure from the aggregate of the intermediate rates rule of the fourth section of the act, and on April 7, 1916, the joint rate attacked was reduced to $83\frac{1}{2}$ cents per 100 pounds, the rate now in effect, thereby removing the fourth section deviation, as the combination rate had been increased to $83\frac{1}{2}$ cents on January 1, 1916, by an increase in the Cortland-Evansville component from 39 cents to $40\frac{1}{2}$ cents. The complaint does not attack the rate charged as inherently unreasonable, and the record discloses no objection to the present joint rate.

We find that the joint through rate assailed was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Evansville. It was stated that owing to a change in management of the complainant company no conclusive evidence could be produced as to who ultimately paid and bore the charges. The paid expense bill was offered, but by itself is insufficient, and reparation must be denied. No departure now exists from the rules of the fourth section, and no order concerning that matter need be entered.

An order of dismissal will be entered.

No. 6710.
BONNERS FERRY LUMBER COMPANY
v.
GREAT NORTHERN RAILWAY COMPANY.

Submitted April 17, 1915. Decided May 31, 1916.

Petitions for rehearing denied, but former order herein modified.

H. Oldenburg and Clapp & Macartney for complainant.

Watson & Abernethy for State Lumber Company, intervener.

John Lind for Eureka Lumber Company, intervener.

E. A. Morley for Board of Railroad Commissioners of the State of Montana.

E. C. Lindley, J. F. Finerty, and W. P. Kenney for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION :

Upon consideration of petitions for rehearing filed herein by the Board of Railroad Commissioners of the State of Montana and by Eureka Lumber Company, intervener, and of the reply of complainant to the last-named petition for rehearing, and upon further consideration of the record, we find and conclude that the present adjustment of rates on lumber from Bonners Ferry and from Montana points, Fortine to Libby, Mont., inclusive, is unduly prejudicial to Bonners Ferry to the extent that the rates from Bonners Ferry exceed the rates from Libby by more than 2 cents per 100 pounds and the rates from Eureka by more than 4.5 cents. An order will be entered modifying our original order accordingly.

Petitions for rehearing denied.

No. 7122.
CASEY-HEDGES COMPANY ET AL.

v.

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY COMPANY.

Submitted May 20, 1915. Decided May 24, 1916.

Rate of 23 cents per 100 pounds charged by defendant for the transportation of certain iron and steel articles in carloads from Cincinnati, Ohio, to Chattanooga, Tenn., found to have been unreasonable to the extent that it exceeded 19 cents, minimum weight 36,000 pounds. Reparation denied.

O. L. Bunn for complainants.

R. Walton Moore and *Frank W. Gwathmey* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations engaged in the iron and steel business at Chattanooga, Tenn. By complaint, filed July 18, 1914, they allege that the carload rate maintained by defendant for the transportation of various iron and steel articles, viz, boiler tubes, structural material, bar iron, bar steel, wrought-iron and steel pipe, iron and steel plates (16 gauge and heavier), and iron and steel rivets, from Cincinnati, Ohio, to Chattanooga, is unreasonable and unjustly discriminatory. Reparation is asked on all shipments made subsequently to July 15, 1912.

A rate of 23 cents per 100 pounds, minimum 30,000 pounds, applicable on "special iron" articles, was assessed on the shipments. Complainants seek to have the articles named in the complaint removed from the list of articles taking rates on "special iron" and to have them given a lower specific rate of 12 cents, minimum 36,000 pounds. The 23-cent rate is not only a local rate, but serves as a basis for the construction or publication of through rates from points north of the Ohio River. Most of the traffic to complainants comes from Pittsburgh. A joint through rate was published from Pittsburgh equal to the combination on Cincinnati, but since the decision in *The Five Per Cent Case*, 31 I. C. C., 351, the joint rate is less than the combination because it has not been made to reflect the increase in the component applicable north of the Ohio River.

Complainants contend that the rate is unreasonable in comparison with a specific carload rate of 15 cents on boiler iron and steel plates

from Cincinnati to Chattanooga and a rate of 17 cents on plow steel. A rate of 12 cents applies on bar iron and wrought-iron or steel plate in the opposite direction; a rate of 15 cents on architectural iron or steel and iron or steel rivets; and a rate of 13½ cents on wrought-iron pipe.

Defendant replies that the rates on boiler iron, steel plates, and plow steel were established approximately 10 years ago to assist boiler and plow manufacturers in Chattanooga, but that other iron and steel articles suffer no hardship on account of these rates. The apparent disparity in the rates on the iron and steel articles in opposite directions between Cincinnati and Chattanooga defendant explains on the ground that its policy has been to encourage traffic from points on its own line to points north of the Ohio River by establishing low northbound rates to enable southern manufacturers to compete in the destination territory. These low northbound rates, moreover, are said to have been established for the benefit of certain of the complainants herein, and therefore are objected to as standards of comparison.

Complainants cite numerous carload rates on other commodities from Cincinnati to Chattanooga: 9 cents on brick; 11 cents on cement; 22½ cents on liquors in glass. But such comparisons without more are of little help.

Defendant also contends that the rate accords with the relative rate adjustment on "special iron" articles throughout the south. The distance from Cincinnati to Chattanooga via defendant's line is 336 miles. The rates on "special iron," including the articles in question, from Nashville, Tenn., Atlanta, Ga., Birmingham and Huntsville, Ala., to various points of destination in the south are from 3 cents to 6 cents higher than the rate attacked for similar distances. Many of the articles are manufactured at the points of origin just named except Huntsville. But complainants show that none of the points of destination named is a center for fabrication or manufacture of iron comparable to Chattanooga. Defendant asserts that the volume of business enjoyed by complainants tends to show that the rate has encouraged rather than retarded the movement of the traffic and predicts that a reduction to the basis sought by complainants would lead to further reductions to related points. The 12-cent rate asked is lower than applies for equal distances in central freight association territory. The local rate on "special iron" articles from Pittsburgh to Cincinnati, for example, is 15.8 cents, formerly 15 cents, for 313 miles.

Chattanooga is reached from Cincinnati by other lines besides defendant's and defendant asserts that the operating conditions on the lines of all carriers handling traffic from Cincinnati to Chat-

nooga, long and short lines alike, should be considered. Defendant's line affords the short route. The contention invokes a sound general principle, but each case must stand upon its own merits.

The 23-cent rate yields 13.7 mills per ton-mile. Defendant's average earnings on all freight handled in 1911, 1912, and 1913, averages 7.54 mills per ton-mile. The rate sought by complainants would yield 7.1 mills, which complainants contend should be fairly remunerative in view of the character of the material carried.

Complainants contend that unjust discrimination exists against them in favor of Nashville, which enjoys a 15-cent rate on special iron articles from Cincinnati. Complainants purchase their shipments f.o.b. point of origin and market their products throughout the entire south, in many cases in competition with Nashville as well as with many other manufacturing cities in the south. They are at considerable disadvantage compared with Nashville in marketing their products at points in Alabama, Mississippi, and Louisiana and attribute it to the difference in the inbound rates.

The short-line distance from Cincinnati to Nashville is 295 miles by way of the Louisville & Nashville Railroad, which line originally established the 15-cent rate. The distance by way of defendant's line and the Tennessee Central Railroad through Emery Gap, Tenn., is 425 miles. The short line from Cincinnati to Nashville is 41 miles less than to Chattanooga and there is a difference of 8 cents in the rate in favor of Nashville. The advantage enjoyed by Nashville is due largely to water competition on the Ohio and Cumberland rivers. The Tennessee River, on which Chattanooga is located, is also navigable, but apparently the boat service has not yet sufficiently developed to affect substantially the rail rates from Cincinnati to Chattanooga. See *Chattanooga Packet Co. v. I. C. R. R. Co.*, 33 I. C. C., 384-385. The effect of water competition on the rates to Nashville is said to be shown in the following table of rates:

From Cincinnati to—	1	2	3	4	5	6	"Special iron" articles.
Chattanooga.....	70	60	53	44	38	29	23
Nashville.....	53	48	39	31	25	25	15

The sixth-class rate to Nashville, which is applicable on the traffic in the absence of commodity rates, is depressed, as well as the rate on special iron. The class rates from Cincinnati to Chattanooga were prescribed in *Receivers & Shippers Asso. of Cincinnati v. C., N. O. & T. P. Ry. Co.*, 18 I. C. C., 440, although no rates were prescribed on special iron. There have also been no reductions since

that time in the general rates on special iron from Cincinnati to Chattanooga. The rate on special iron to Chattanooga is 6 cents less, and to Nashville 10 cents less, than the corresponding sixth-class rates. The current rate on special iron to Chattanooga has been in effect since March 10, 1900. Prior to that date it bore the same relation to the sixth-class rate as the relation now maintained in the rates to Nashville. It appears, however, that defendant does not control the rate to Nashville and therefore does not discriminate against Chattanooga by the rate maintained on special iron articles from Cincinnati to Chattanooga.

We find that the rate complained of is and for the future will be unreasonable to the extent that it exceeds 19 cents per 100 pounds, minimum weight 36,000 pounds.

It is practically impossible to distinguish bridge plates from boiler plates, or bar iron and steel from plow steel. And yet, different rates are being charged. In *Sanders v. C., M. & St. P. Ry. Co.*, Docket No. 4654, unreported, we said with respect to a rate applicable on "plow steel," that—

The maintenance of special commodity rates for plow factories on bars, plates, and slabs used in the manufacture of plows, which in general are identical with and not distinguishable for transportation from merchantable bars, plates, and slabs sold to the general trade, suggests a possible discrimination or conflict with the well-established rule that a rate can not be conditioned upon the use to which a commodity is to be put.

Defendant should remove from its tariffs the ambiguities mentioned by stating the rates specifically enough to avoid any possible discrimination.

No reparation will be awarded.

An appropriate order will be entered.

No. 6758.
MAJOR STAVE COMPANY ET AL.
v.
MEMPHIS, DALLAS & GULF RAILROAD COMPANY ET AL.

Submitted February 6, 1915. Decided May 19, 1916.

1. Rate of 17½ cents per 100 pounds on oak and gum staves and heading in carloads from Arkadelphia and Ashdown, Ark., to Houston, Texas City, and Galveston, Tex., not found to be unreasonable.
2. Charges collected for the transportation of certain shipments of oak staves and heading in carloads from Arkadelphia, Ark., to Texas City, found unreasonable to the extent that they exceeded the charges which would have accrued at a rate of 17½ cents per 100 pounds, and reparation awarded.

G. F. Thomas for complainants.

H. G. Herbel and *F. G. Wright* for St. Louis, Iron Mountain & Southern Railway Company; Gulf, Colorado & Santa Fe Railway Company; and Texas & Pacific Railway Company.

J. M. Souby, *S. W. Moore*, and *F. H. Wood* for Houston & Texas Central Railroad Company; Kansas City Southern Railway Company; Galveston, Harrisburg & San Antonio Railway Company; and others.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations engaged in the manufacture of staves and heading at Arkadelphia and Ashdown, Ark. By complaint, filed March 27, 1914, they allege that the rates charged by defendants for the transportation of oak and gum staves and heading in carloads from Arkadelphia and Ashdown to Houston, Texas City, and Galveston, Tex., are unjust, unreasonable, and discriminatory, in violation of sections 1, 2, and 15 of the act. Reparation is asked on specified shipments of oak staves and heading to Houston and Texas City on and after February 13, 1913. None of the shipments moved to Galveston, and the request for a lower rate to that point is based upon complainants' intention to enter the Galveston market at some future time. Only rates applicable to domestic shipments are in issue. All rates are stated in cents per 100 pounds.

Defendants objected at the hearing to the introduction of evidence relative to the question of discrimination, on the ground that dis-

crimination was alleged too generally to apprise defendants of what discrimination they must defend. No violation of section 3 is alleged; and as the complaint nowhere indicates in respect of what person or persons section 2 is contravened, the objection was well taken and must be sustained. *Stuarts Draft Milling Co. v. S. Ry. Co.*, 31 I. C. C., 623; *United States Leather Co. v. Southern Ry. Co.*, 21 I. C. C., 323.

Arkadelphia is 80 miles northeast and Ashdown 20 miles north of Texarkana, Ark. The former is on the St. Louis, Iron Mountain & Southern Railway, hereinafter termed the Iron Mountain. Ashdown is a common point on the Kansas City Southern Railway, the St. Louis & San Francisco Railroad, hereinafter termed the Frisco, and the Memphis, Dallas & Gulf Railroad.

Generally the rates on staves and heading are the same as the rates on lumber, but in some instances are lower. To Houston and Galveston from both points of origin the present rate is $17\frac{1}{2}$ cents, except that from Ashdown to Houston via the Kansas City Southern and Texarkana & Fort Smith to Beaumont, and the Beaumont, Sour Lake & Western and Trinity & Brazos Valley beyond, the rate is $18\frac{3}{4}$ cents.

To Texas City the present rate is also $17\frac{1}{2}$ cents, except via Lake Charles, La., and the Sunset Central lines, a route which takes the $18\frac{3}{4}$ -cent rate. From Arkadelphia the rate was 20 cents when the complaint was filed and for 34 days thereafter.

Points in Arkansas on the Iron Mountain are divided into two groups of origin in respect of rates on lumber and related commodities to southeastern Texas, including Houston, Texas City, and Galveston. A rate of 23 cents applies generally from points north and west of Argenta; a rate of $17\frac{1}{2}$ cents from points south and east of Argenta, except that from certain branch-line points a somewhat higher rate applies. On the Kansas City Southern, stations in Arkansas and Texas from Mena, 88 miles north of Ashdown, to Bloomsburg, Tex., 39 miles south of Ashdown, take the $17\frac{1}{2}$ -cent rate to Houston, while to Texas City and Galveston that rate applies from a group of origin which extends from De Queen, 35 miles north of Ashdown, to and including Bloomsburg. The Kansas City Southern stations farther south between Bloomsburg and Rodessa, La., take rates of $10\frac{3}{4}$ cents to Houston and $15\frac{1}{2}$ cents to Texas City and Galveston.

Except from Shreveport and its vicinity the rates from most points in northern Louisiana are $13\frac{3}{4}$ cents to Houston and 15 cents to Texas City and Galveston. These are the rates which complainants ask for on staves and heading from Arkadelphia and Ashdown. The short-line distances and earnings per ton-mile under the present and proposed rates are shown in the following table:

Ton-mile earnings under—	From Ashdown to —			From Arkadelphia to —		
	Houston (323 miles).	Texas City (365 mi es).	Galves- ton (372 miles).	Houston (383 miles).	Texas City (424 miles).	Galves- ton (431 miles).
Present rate (17½ cents).....	<i>Mills.</i> 10.83	<i>Mills.</i> 9.89	<i>Mills.</i> 9.41	<i>Mills.</i> 9.14	<i>Mills.</i> 8.25	<i>Mills.</i> 8.12
Proposed rate (13¼ cents to Houston, 15 cents to Texas City and Galveston).....	8.51	8.22	8.06	7.18	7.08	6.96

The Ashdown rates to Houston and Galveston have experienced many fluctuations during the last few years, as indicated in the following table:

Effective date of tariff.	From Ashdown to—	
	Houston.	Galveston.
	<i>Cents.</i>	<i>Cents.</i>
May 5, 1901.....	20	20
Nov. 10, 1909.....	10½	13½
Jan. 23, 1910.....	1 17½	
Mar. 10, 1910.....	12	18
May 10, 1910.....		16
Aug. 10, 1910.....	13½	
Oct. 12, 1910.....	12	
Mar. 24, 1911.....	18½	
Aug. 24, 1911.....	17½	17½

¹ Via Beaumont and Frisco lines, joint rate.

² Via Shreveport; Houston & Shreveport R. R., Houston East & West Texas Ry., and Texas & New Orleans R. R.

³ Via Shreveport; Houston & Shreveport R. R. and Houston East & West Texas Ry.

Defendants state that the rates of 10½ cents to Houston and 13½ cents to Galveston were published in error, and that an attempt was made to correct the error as soon as discovered. Prior to November 10, 1909, rates from Arkansas and Louisiana were published in the tariffs of the individual carriers, and their consolidation into a tariff published by agent Leland resulted in numerous errors which it took a long time to discover and correct.

Complainants' evidence consists principally of categorical answers by its witnesses to inquiries concerning rates, distances, and ton-mile earnings, and of exhibits comparing rates from Ashdown and Arkadelphia to Houston, Texas City, and Galveston with those to New Orleans, Memphis, Thebes, St. Louis, and other points. In most instances the rates attacked earn a little more per ton-mile than the rates cited in comparison, but no evidence is furnished by complainants that the transportation conditions are substantially similar or that the volume of traffic is relatively the same. We have held repeatedly that ordinarily rate adjustments can not be condemned upon such evidence. Defendants contend, moreover, that lower rates from Arkansas to New Orleans than to Houston, Texas City, and Galveston, and lower rates from Louisiana to Houston, Texas

City, and Galveston than from the southern Arkansas group above described, are justified by competitive and other conditions. They explain the present rate adjustment substantially as follows:

Hardwood lumber, from which staves and heading are usually manufactured, is produced in large quantities in Mississippi and other states bordering on the east bank of the Mississippi River. The hardwood area west of the Mississippi is in Louisiana and in Arkansas north and east of the Red River. Little hardwood is produced in Louisiana and Texas south and west of the Red River, but pine is produced in large quantities. Lines east of the Mississippi River maintain low water competitive rates to New Orleans on hardwood from Memphis and intermediate territory, and this water competition, together with the competition from producers east of the Mississippi, caused correspondingly low rates to New Orleans from the hardwood area in Louisiana and Arkansas. A low basis of rates on intrastate traffic prescribed by the Railroad Commission of Louisiana also influences the rates from Arkansas points to New Orleans. No hardwood lumber is produced in the vicinity of Houston, Texas City, and Galveston, so that the rates from Arkansas to those points, unlike the rates to New Orleans, are not affected by competition with near-by producing territory. The difference in rates on lumber is less than obtains with respect to class and commodity rates in general. Relatively lower rates from southern Louisiana than from Arkansas were established to Houston and Galveston by the Southern Pacific's Sunset Central lines, and other carriers with lines from southern Louisiana, in order to meet the competition of water carriers and to harmonize the rates from Louisiana points with Texas intrastate rates from Orange, Beaumont, and other points in the pine-producing section near the eastern boundary of Texas. Rates from Lake Charles, La., and points west are the same generally as the rates from Beaumont and Orange. Prior to June 18, 1915, a rate of 8½ cents applied from Beaumont and Orange to Houston; a rate of 9 cents to Galveston. Both of these rates were increased on that date to 10 cents. Rates from points east of Lake Charles range from 13½ to the New Orleans rate of 15½ cents. The rates from branch lines extending northward into central Louisiana, and from Shreveport and other stations on the Houston & Shreveport Railroad, are made with relation to the rates from southern Louisiana.

From Shreveport and vicinity at the time of movement the rate was 8½ cents to Houston by way of the Houston & Shreveport Railroad, 9 cents to Texas City and Galveston, but since increased to 10 cents. These rates appear to have been low as compared with the 13½-cent rate applicable to Houston from northern Louisiana generally, with the 15-cent rate applicable to Texas City and Galveston, and

with the 17½-cent rate applicable from the southern Arkansas group. Effective June 18, 1915, the rate from Shreveport to Texas City and Galveston was increased to 10 cents; the rate to Houston was increased to 10 cents on July 18, 1915. But defendants explain that the rates from Shreveport are affected not only by competition with producing territory in eastern Texas and southern Louisiana, but also by competition with New Orleans. Railroads operating from Shreveport to New Orleans originally were forced to maintain the scale of rates fixed by boats plying on the Red River, and when railroads were constructed from Houston to Shreveport it was found necessary to adopt the Shreveport-New Orleans rate scale. Defendants argue further that the volume of traffic is greater from Arkansas to New Orleans, Memphis, Thebes, and St. Louis than to Houston, Texas City, and Galveston, that the return empty car movement is substantially less, and that the hauls generally involve main-line movement over one or two lines, whereas the hauls to Houston, Texas City, and Galveston are three or more line hauls.

Many rates for similar distances in the same general territory equal or exceed the rates from Ashdown and Arkadelphia. An export rate of 18½ cents applies to Texas City and Galveston from McNeill, Ark., Homer, La., and other points in southern Arkansas and northern Louisiana on the Louisiana & Northwestern Railroad; a rate of 17½ cents to Port Arthur, Tex., from stations on the Kansas City Southern in the Ashdown group; a rate of 17½ cents from Lake Charles, La., to Port Lavaca and Palacios, Tex., and a rate of 20 cents from Lake Charles to Corpus Christi, Rockport, Aransas Pass, and Portland, Tex. The rate from the Ashdown group to Port Arthur yields from 8.6 mills to 11.3 mills per ton-mile for single-line movements. The 17½-cent rate and 20-cent rate from Lake Charles yield from 9.6 mills to 12.7 mills per ton-mile for distances ranging from 275 miles to 417 miles. The rates from Lake Charles were assailed in *Lumber Rates from Lake Charles and West Lake, La.*, 31 I. C. C., 258, because they represented an increase in previous rates but were found justified. In *Anderson-Tully Co. v. A. & V. Ry. Co.*, Docket No. 5537, unreported, a rate of 20 cents applying on box lumber or shooks from Vicksburg, Miss., to Port Arthur, Tex., which earned 11.3 mills per ton-mile, was not found unreasonable for a haul of 354 miles over three lines. In *National Lumber Exporters Asso. v. K. C. S. Ry. Co.*, 25 I. C. C., 78, we approved a rate of 14 cents on lumber from points on the Iron Mountain in Louisiana to New Orleans for export, which earned 9.7 mills per ton-mile for an average haul of 290 miles, the distances averaged ranging from 194 miles to 354 miles. This case also involved rates from Kansas City Southern points in Louisiana and Texas and from points in Arkansas on the Iron Mountain.

All group adjustments necessarily involve some inequality, but are not to be disturbed unless the rates from particular points are shown to be unreasonable or unduly prejudicial. The difference in rates to Houston, Texas City, and Galveston from points in northern Louisiana, Shreveport particularly, and from Ashdown and Arkadelphia is appreciable, but the transportation conditions also appear to be substantially dissimilar. We find that the 17½-cent rate from Ashdown and Arkadelphia to Houston, Texas City, and Galveston is not shown to be unreasonable and that defendants have justified the increases effected in the rates from Ashdown since January, 1910, except the increase from 17½ cents to 18½ cents in the rate from Ashdown to Houston over the Kansas City Southern and Texarkana & Fort Smith to Beaumont, the Beaumont, Sour Lake & Western to Belt Junction (Frisco Junction), Tex., and the Trinity & Brazos Valley Railway beyond. The Texarkana & Fort Smith is not a party defendant, and in the absence of necessary parties no finding can be made respecting this rate.

A number of shipments from Arkadelphia to Texas City were made by the Arkadelphia Milling Company, Incorporated, one of the complainants herein, during the period from April 19, 1913, to September 26, 1913, when a rate of 20 cents was in effect by way of Texarkana, the Texas & Pacific Railway, and the International & Great Northern Railway. Some shipments moved by this route at the 20-cent rate. Others moved by way of Lake Charles, La., and the Southern Pacific's Sunset Central lines, as directed by the shipper. The rate applicable by way of this route was 23½ cents, 18½ cents to Texas City Junction, and 5 cents beyond. The complaint alleges that charges were collected on the shipments routed by way of Lake Charles at a rate of 20 cents, but complainants' witness testified that a rate of 23 cents was charged. The Texas & New Orleans Railroad Company, one of the lines participating in the transportation over this route, is not a party defendant herein and no finding can be made respecting this rate. Rates contemporaneously in effect from Arkadelphia to Houston and Galveston were 17½ cents by way of the Texarkana, Texas & Pacific and the International & Great Northern, and 18½ cents by way of Lake Charles and the Sunset Central lines. The present rates by the latter route are 17½ cents to Houston and Galveston and 18½ cents to Texas City. This departure from the policy of maintaining a blanket rate from the southern Arkansas group to all points in the southeastern Texas group, including Houston, Texas City, and Galveston, is unexplained.

We find that the rate charged on the shipments from Arkadelphia via Texarkana to Texas City was unreasonable to the extent that it

exceeded $17\frac{1}{2}$ cents per 100 pounds; that complainant Arkadelphia Milling Company, Incorporated, made shipments from Arkadelphia to Texas City as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found to be reasonable; and that it is entitled to reparation with interest.

The exact amount of reparation due can not be determined on the present record. Complainant accordingly should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, route, car number and initials, weight, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants, we will consider further issuing an order awarding reparation.

As a rate of $17\frac{1}{2}$ cents has been in effect by way of the Texarkana route for more than one year, no order will be entered for the future.

39 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 761.
GRAIN TRANSIT RULES AT BUFFALO, N. Y.

Submitted April 14, 1916. Decided May 23, 1916.

Proposed cancellations of transit regulations at Buffalo, N. Y., Toledo, Ohio, Detroit, Mich., and various other points on lines of respondents, on grain when originating at stations on the lines of certain of the respondents' western connections, found not to have been justified.

Parker McColestier for New York Central lines.

Fred Pond, Nisbet Grammer, C. P. Wolverton, H. T. Burns, and M. Purcell for the Corn Exchange of Buffalo.

F. E. Williamson for Buffalo Chamber of Commerce and Corn Exchange of Buffalo.

H. G. Wilson for Toledo Produce Exchange and Raymond P. Lipe Company.

REPORT OF THE COMMISSION.

MEYER, Chairman:

The New York Central lines, respondents in this proceeding, proposed by cancellation thereof to provide that transit regulations now in effect at Buffalo, N. Y., Toledo, Ohio, Detroit, Mich., and various other points on lines of respondents on grain, i. e., "stopping for inspection, weighing, transfer, cleaning, storing, mixing, or change of ownership, or consignee, or destination," would not apply on traffic originating at stations on or received from the Chicago & Alton Railroad; Pennsylvania Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway; Toledo, Peoria & Western Railway; Vandalia Railroad; Chicago & Eastern Illinois Railroad; Chicago, Rock Island & Pacific Railway; and Cincinnati, New Orleans & Texas Pacific Railway. The schedules carrying the cancellations were filed to become effective January 1 and 3, 1916, but upon protests of the Toledo Produce Exchange, Raymond P. Lipe Company, Illinois Grain Dealers' Association, the Corn Exchange of Buffalo, Indiana Grain Dealers' Association, and Ohio Grain Dealers' Association, they were suspended until October 30, 1916. Subsequently to the Commission's order of suspension respondents voluntarily deferred the effective date of all the tariffs proposing cancellation of transit at points on their lines other than those named in the tariffs suspended by the Commission.

The New York Central Railroad is willing to restore transit on grain originating on the Chicago & Alton. The Michigan Central Railroad did not attempt to justify cancellations of transit on grain moving via Chicago, Ill., and originating on the lines of the Chicago & Alton, Chicago & Eastern Illinois, or the Chicago, Rock Island & Pacific railways.

Under the regulations sought to be canceled grain moves to the transit point under local rates. When an outbound shipment is made the freight charges are adjusted to the basis of the joint through rate, origin to final destination. The effect of the suspended tariffs, if they are permitted to become effective, will be that grain shipped to a transit point and later reshipped thence will pay the combination of the local rate to the transit point and the local rate beyond, instead of the joint through rate from point of origin to ultimate destination. To points shown in an exhibit filed by one of the protestants the resultant increases are from 4.2 to 7.8 cents per 100 pounds. The suspended tariffs change no existing joint rates on through movements.

The excepted originating lines refused after transit had been accorded grain shipped from stations on their lines to accept corrections of their earnings to the basis of the divisions applicable under joint rates. For example, prior to the increases permitted in *The Five Per Cent Case*, 31 I. C. C., 351, a shipment of 28,000 pounds of corn moved from Loree, Ind., a station on the line of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, destined to Buffalo. The local rate to Buffalo from Loree was 12 cents per 100 pounds; the Pittsburgh, Cincinnati, Chicago & St. Louis Railway's proportion was 7.8 cents, or \$21.84. The shipment was reconsigned to Westfield, Pa., the joint rate to which from Loree was 16 cents. The Pittsburgh, Cincinnati, Chicago & St. Louis Railway's proportion of the 16-cent rate was 6.3 cents, which resulted in a shrinkage of its earnings to \$17.64, or \$4.20 less than those that would have accrued under the local rate to Buffalo. The Pittsburgh, Cincinnati, Chicago & St. Louis Railway refused to accept this latter amount. This refusal of the originating lines caused respondents to cancel the transit regulations. Respondents are willing to restore the transit herein involved, if the carriers from which the grain is received will accept an adjustment of their charges on the basis of the divisions of the joint rates.

None of the joint rates applicable to the shipments from points named in the suspended tariffs were prescribed by the Commission. Respondents admit the only justification for canceling the transit regulations is the disagreement as to the divisions to be applied. They state they would not have proposed the cancellation of transit

had they been positive the Commission had jurisdiction to fix divisions of joint rates not prescribed by it. Respondents suggested that a carrier can not be required to perform a service unless it receives a reasonable compensation therefor, and contend that an order of the Commission canceling the tariffs under suspension would compel respondents to transport grain at an unreasonably low compensation. They do not contend that the existing joint rates are unreasonably low, nor do they seek to justify the increased charges incident to cancellation of transit, or its cancellation, but ask, if the Commission finds it has no jurisdiction to fix divisions of the rates involved herein, that they be given opportunity to present evidence to prove the inadequacy of their revenue where the division properly applicable from the local rate is applied on reconsigned grain.

The tariffs naming both the local and joint rates of the originating carriers contain a general rule to the effect that freight transported under them will be subject to the current rules and regulations of participating lines while in their possession, in regard to reconsignment, storage, terminal service, weighing, and other services, and also in regard to all other rules and regulations that may in any wise change, affect, or determine any part or the aggregate of the rates named in such tariffs, etc. Interpreting this provision, the Pittsburgh, Cincinnati, Chicago & St. Louis Railway made it plain that if the New York Central desired to give transit on grain originating on the Pittsburgh, Cincinnati, Chicago & St. Louis Railway the former must stand the shrinkage from its revenue or cancel the transit arrangement. Plainly, as the existing joint rates are not shown to be other than just and reasonable, and as the rates resulting from the cancellation of the transit regulations are not sought to be justified when applied to reconsigned grain, the disagreement as to divisions must not cast unjustified increased charges on the shippers. The proposed increased charges have not been justified, and an order will be entered requiring the cancellation of the suspended tariffs.

If the interested carriers are still unable to reach an agreement upon divisions of the existing joint rates the Commission will, upon notification to that effect, arrange for further hearing and prescribe the divisions.

No. 7925.
WOOLSON SPICE COMPANY
v.
PENNSYLVANIA COMPANY ET AL.

Submitted November 22, 1915. Decided May 19, 1916.

Defendants' refusal to include trap cars used by complainant within the terms of the so-called average agreement found to be without lawful tariff authority. Reparation awarded.

H. G. Wilson for complainant.

L. E. Hinkle for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the coffee and spice business, with its principal offices at Toledo, Ohio. By complaint, filed April 17, 1915, it alleges that defendants' refusal since December, 1912, to include trap cars within the terms of the so-called average agreement respecting car demurrage was and is unreasonable and also unauthorized by tariffs lawfully on file. Reparation is asked.

The controversy was brought to our attention informally on November 24, 1913, without reference to specific cars upon which alleged unlawful demurrage was assessed. A car service statement for the month of November, 1913, was added on January 14, 1914, and constitutes the only list of cars filed during the informal correspondence. All claims included in the complaint that accrued more than two years prior to April 17, 1915, are therefore barred by the statute of limitation.

Complainant uses trap cars for the transportation of less-than-car-load freight from its plant on the Manufacturers Railway in Toledo to the Pennsylvania Company's freight houses in Toledo, to connecting lines' transfer stations, and to final destinations. It receives few inbound trap cars. For a period of two years prior to the date of the filing of the complaint, rules governing the use of trap cars were carried in separate trap-car tariffs practically without change during the entire period, and during the same period complainant and defendants were parties under proper tariff authority to various average agreements, all of which were identical, however, with respect to the kind of cars to which the agreements applied.

Rule 6 of the current trap-car tariff, Pennsylvania Company tariff I. C. C. No. F-538, which became effective April 1, 1914, reads as follows:

Cars must be loaded and unloaded promptly, and if detained they will be subject to the established rules and regulations governing car demurrage charges, published in I. C. C. No. F-432 (R. C. O. F. 400), (I. R. C. F. 192), (R. & W. C. I. F. 166), supplements thereto and reissues thereof (tariff file No. C-83).

in place of rule 6 in Pennsylvania Company tariff I. C. C. No. F-361, effective March 23, 1912, as follows:

Cars must be loaded and unloaded promptly, and if detained they will be subject to the established car demurrage rules and charges published in Penna. Co., I. C. C., F-306 (R. C. O., F-274), (R. C. O., F-294), (I. R. C., F-138), (R. & W. C. I., F-123), supplements thereto and reissues thereof.

The tariffs referred to in both rules were and are defendants' demurrage tariffs embodying the so-called Uniform Demurrage Code, which provides for the assessment of demurrage on all cars "held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purposes." The same tariffs provide rules governing the assessment of demurrage under the so-called average plan, which rules are so well known that they need not be detailed.

Defendants contend that the provisions of the demurrage tariffs are not applicable under the rules quoted until a trap car has been detained by the consignor or consignee beyond the free time allowed, with the result that while the detention of such a car beyond the free time is followed by the assessment of demurrage charges, its release within the first 24 hours can not entitle the consignor or consignee to a credit under the average agreement. But we can not agree with this contention. The meaning of a tariff is to be gathered from a reasonable construction of the terms employed in it and is not affected by the unexpressed intentions of its framers. Where the average plan is operative the words "if detained" can not mean "if detained beyond 48 hours," which is what defendants' contention comes to. They contemplate any detention, no matter of how short duration.

We find that the effect of the rules quoted is to bring trap cars as fully and completely within the terms of defendants' demurrage tariffs as cars used in transportation under tariffs which make the usual general reference to demurrage tariffs.

Defendants further contend that the demurrage rules themselves exclude trap cars, because they apply only to cars used in the transportation of carload freight. But both the demurrage rules and the rules setting forth the average plan refer to "cars" without limitation or modification, and nowhere state that their provisions are

restricted to cars used in the transportation of carload freight. Trap cars are not referred to specifically either by way of inclusion or exclusion. It may reasonably be inferred that the demurrage rules apply on the car and not on the contents thereof, and it is immaterial whether the car contains or is to contain carload or less-than-carload freight, provided it be placed for loading by the consignor or for unloading by the consignee, as the case may be. It necessarily follows that so far as the provisions of the demurrage tariffs are concerned, they apply in their entirety to all cars, unless specifically excepted, without reference to the quantity or kind of freight contained in them.

We find that defendants' refusal to include trap cars within the terms of the average agreement is unauthorized and that any demurrage charges collected which would not have accrued if trap cars had been included within the terms of the average agreement were unlawful. We further find that complainant paid and bore charges on the basis assailed, that it has been damaged to the extent that such charges exceeded those which would have accrued if trap cars had been specifically included in the average agreement, and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on the present record, and complainant should prepare a statement relative to all shipments on which the claims are not barred by the statute of limitations showing the route of movement of each shipment, the car numbers and initials, period of detention, and other facts necessary to show that it would have earned sufficient credits under the average agreement, in accordance with our findings herein, to offset the debits in settlement of which the payments enumerated in the complaint were made. This statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainants and verified by defendants, we will consider the entry of an order awarding reparation.

HARLAN, *Commissioner*, dissents.

89 I. C. C.

No. 7274.

O. W. SLANE GLASS COMPANY

v.

VIRGINIA & SOUTHWESTERN RAILWAY COMPANY
ET AL.

Submitted September 21, 1915. Decided May 19, 1916.

On rehearing, original decision affirmed and complaint dismissed.

M. M. Caskie for complainant.

F. W. Gwathmey for Virginia & Southwestern Railway Company
and Southern Railway Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION :

The complaint, filed September 10, 1914, alleged that the rate of \$2 per net ton, minimum 60,000 pounds, charged by defendants for the transportation of sand in carloads from Mendota, Va., to Statesville, N. C., was unreasonable, unduly prejudicial, and in violation of the fourth section of the act in that it exceeded the aggregate of the intermediate rates based on Paint Rock, N. C. Reparation was asked on shipments moved within the statutory period. Complainant's contentions, except as to the alleged violation of the fourth section, rested on substantially the same facts as were presented in *Standard Mirror Co. v. V. & S. W. Ry. Co.*, Docket No. 5820, unreported, decided February 17, 1915, which involved the rate of \$2 per net ton on sand in carloads from Mendota to High Point and Winston-Salem, N. C., in the vicinity of Statesville, and in the same rate group. The record in the *Standard Mirror Co. Case, supra*, was made a part of the record in this case. We found, following the *Standard Mirror Co. Case, supra*, that the \$2 rate was not unreasonable or unduly prejudicial and that it did not violate the aggregate of intermediate rates rule of the fourth section, for the reason that one of the intermediate rates applied only on sand and loam soil, a fertilizer filler, and not on sand. Complainant filed a petition for rehearing June 19, 1915, contending that the joint rate assailed exceeded the aggregate of the intermediate rates based on Paint Rock, N. C. Rehearing was granted and the case is now before us on the whole record.

During the period from September 17, 1912, to April 21, 1914, inclusive, complainant shipped, from Mendota to Statesville, 11 carloads of sand, i. e., quartz rock or silica, ground and washed, used by complainant in beveling mirrors. All of the cars moved: Virginia & Southwestern Railway to Bluff City, Tenn.; Southern Railway thence to destination. Charges were collected at a specific joint commodity rate of \$2 per net ton. A mileage rate of 80 cents per net ton, minimum weight marked capacity of car, but not less than 60,000 pounds, applied on sand from Mendota for distances up to 150 miles and over 125. Paint Rock is 150 miles from Mendota over the route of movement. The mileage scale applied from Mendota to Southern Railway stations in Tennessee, Knoxville division, and the tariff referred to Southern Railway Tennessee local tariff I. C. C. A-4075, or reissues thereof, for the list of stations to which the scale applied. The tariff referred to, and reissue I. C. C. No. A-5125, showed Paint Rock to be on the Knoxville division of the Southern Railway and as being in "Tenn.-N. C."; the Southern Railway's station at Paint Rock is located on both sides of the Tennessee-North Carolina state line. The tariff provided that the rates shown therein might be used only when no other rates applied and that they might not be used, either alone or in combination, in preference to any specific tariff rate. A mileage scale of commodity rates was applicable, as stated in the tariff in which it appeared, "between all stations in North Carolina." Among the commodities named was "sand and loam soil, per car 40,000 pounds, excess in proportion." Statesville is 158 miles from Paint Rock, and the rate provided for this distance was \$19 per car, or 95 cents per net ton. This rate, together with the 80-cent rate described to Paint Rock, aggregated \$1.75 per net ton, or 25 cents per net ton less than the joint rate charged.

Defendants assert that the mileage rate on "sand and loam soil" was applicable on a particular kind of soil composed of sand and loam, used as a fertilizer filler by manufacturers of that commodity, and was inapplicable on sand. "Sand" and "loam soil" were indexed separately in the table of contents of the tariff, and in connection with each reference was made to the item naming the rate on "sand and loam soil." "Sand and loam soil" was not indexed.

Complainant shows that mileage rates applicable to intrastate shipments of "sand and loam soil" in North Carolina have been applied by the Southern Railway to sand in straight carloads. The framers of the tariff containing the mileage scale on "sand and loam soil" apparently did not intend it to apply on shipments of sand in straight carloads, but intention alone is not controlling. Assuming that the manner in which the item was indexed justifies the construction placed upon it by complainant and that the mile-

age scale in North Carolina applied on sand, there still remains the question whether defendants have justified the joint rate.

Effective March 30, 1915, the mileage scale of rates on sand from Mendota to Southern Railway stations in Tennessee was canceled and the present rate per net ton from Mendota to Paint Rock over the route traversed by complainant's shipments is \$1.40. The mileage scale in North Carolina is still in effect, and therefore the present aggregate of intermediate rates from Mendota to Statesville over the route of movement is \$2.35 per net ton. The adjustment effective during the period of movement was protected by a general fourth section application.

We held in the *Standard Mirror Case*, *supra*, that although the \$2 joint rate from Mendota to Winston-Salem, High Point, and grouped points, including Statesville, departed from the aggregate of intermediate rates rule of the fourth section, the joint rate was not shown to be unreasonable or unduly prejudicial to complainant. In *Humphreys-Godwin Co. v. Y. & M. V. R. R. Co.*, 31 I. C. C., 25, we held that a joint rate in excess of the aggregate of intermediate rates over the same through route presumably is unreasonable to the extent that it exceeds the aggregate of the intermediate rates, but that the presumption is not conclusive and may be rebutted.

The rates from Mendota to Statesville based on Paint Rock were subject to the act only because they were contained in tariffs filed with the Commission, and because physically Paint Rock is situated both in Tennessee and North Carolina. Defendants show that the North Carolina mileage scale on "sand and loam soil" was issued for the movement of loam soil to be used as a fertilizer filler, and that it is unreasonably low for the transportation of silica sand intended for the manufacture of glass and mirrors; also that the class P rate, applicable on sand, was \$20.90 per car of 25,000 pounds, or \$1.672 per net ton.

We find that the \$2 rate assailed is not shown to have been unreasonable, and our former findings and order are affirmed.

89 I. C. C.

No. 7496.
CITY ICE DELIVERY COMPANY
v.
PERE MARQUETTE RAILROAD COMPANY ET AL.

Submitted November 5, 1915. Decided May 19, 1916.

1. Charge of \$6 per car for the transportation of empty refrigerator cars from Toledo, Ohio, to Rose Center, Mich., for return loading with ice found to have been assessed without lawful tariff authority. Refund directed.
2. Tariff rule providing a mileage charge for the transportation of empty refrigerator cars from the point at which such cars are available to the point at which they are to be loaded with ice for ensuing interstate movement condemned in its application to the movement of empty cars to Rose Center.
3. Higher charge for the transportation of ice in refrigerator cars than for its transportation in ordinary equipment found proper, following *Mountain Ice Co. v. D., L. & W. R. R. Co.*, 15 I. C. C., 305; *Eagle Ice Co. v. C., M. & St. P. Ry. Co.*, 37 I. C. C., 250.

Beaumont, Smith & Harris for complainant.

George C. Conn for Pere Marquette Railroad Company and its receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale and retail ice business at Cleveland, Ohio. By complaint, filed November 21, 1914, it alleges that the charge of \$6 per car assessed by the Pere Marquette Railroad Company, hereinafter referred to as defendant, for the movement of empty refrigerator cars from Toledo, Ohio, to Rose Center, Mich., for return loading with ice, was unreasonable, unjustly discriminatory, unduly prejudicial, and without lawful tariff authority. Reparation is asked.

Rose Center is a local point on defendant's line between Toledo and Saginaw, Mich., 85.6 miles north of Toledo. Complainant and its predecessor have shipped ice from Rose Center since 1909. The principal movement is to Cleveland and takes place during the summer months. The use of refrigerator cars is desirable during these months, as there is less shrinkage and the ice reaches destination in better condition than when shipped in box cars. For a number of years prior to 1913 refrigerator cars were furnished complainant by defendant for this traffic without charge, but in June, 1913,

when the number of such cars received by defendant from its connections at Toledo for loading at Rose Center averaged about one a day defendant refused further to move them empty except at a charge of \$6 per car. After correspondence and conferences with defendant complainant agreed to pay \$6 per car for the movement of empty refrigerators from Toledo to Rose Center. This charge was collected on more than 200 empty refrigerator cars which moved from Toledo to Rose Center on complainant's order during the shipping season of 1914. Defendant's connections which delivered the empty refrigerators to it at Toledo made no charge for the haul up to Toledo.

Defendant states that its rates on ice were predicated on the use of box cars. Prior to October 26, 1914, the rate on ice from Rose Center to Cleveland was \$1 per ton. At one time, antedating the period covered by the complaint, it was 90 cents per ton. On October 26, 1914, it was increased to \$1.05 per ton. The distance between the points in question is 198 miles and the \$1 rate earned 5.05 mills per ton-mile. Based on an average carload of 29 tons the car-mile earnings were 14.6 cents. The increased rate of \$1.05 earns 5.3 mills per ton-mile and 15.37 cents per car-mile. Defendant alleges that the revenue derived from the transportation of the ice is unremunerative and that it can not afford to move the empty refrigerator cars for less than 6 cents per mile, with a minimum of \$6 per car.

One question at issue is said to be the fairness of the rate for the total service rendered including the movement of the empty car at a charge over and above the rate for the loaded movement. Defendant concedes that is not the usual practice to charge for the movement of empty equipment to points for loading, and cites but one isolated instance of the imposition of a charge of that kind. An item in official classification under the head of "vehicles, not self-propelling," and subhead of "cars, railroad or railway, * * * moved on own wheels," is cited as authority, which provides for a charge of 6 cents per mile, subsequently increased to 6.3 cents, minimum charge 100 miles, for the movement of refrigerator cars. But this item covers the movement of refrigerator cars only when shipped as freight from a consignor to a consignee with billing issued as in the case of the transportation of ordinary freight. The refrigerator cars involved were not so shipped. Bills of lading were not issued and the cars moved in the ordinary manner of freight cars hauled to a point for loading. The collection of \$6 per car for their movement was without lawful tariff authority.

Effective October 1, 1915, subsequently to the hearing herein, defendant published a tariff rule providing for a charge of 6 cents per car per mile for the movement of refrigerator cars on its line

from the point at which such cars are available to the point at which they are to be loaded when the cars are ordered for the transportation of freight taking sixth-class rates, or lower. Ice in carloads is classified sixth class.

Section 1 of the act provides in part that it shall be the duty of every carrier to furnish cars upon reasonable request therefor. This duty, however, does not carry with it a right to charge for the movement of the car from the point where it may be at the time to the point where it is wanted. Such a charge unjustly discriminates against shippers at stations to which the empty cars must usually be hauled for varying distances and unduly prefers shippers at points where empty cars are always available. We are unable, therefore, to sanction the rule now in force and find that it should be canceled in so far as it applies to the movement of empty refrigerator cars to Rose Center for loading with ice and ensuing use in interstate movement.

An additional charge may be just and reasonable when refrigerator cars are used for the transportation of the ice, but it should be added to the rate for the transportation of the commodity and not imposed as a mileage charge for the movement of the empty car. The propriety of the imposition of a higher charge when refrigerator equipment is used was recognized in *Mountain Ice Co. v. D., L. & W. R. R. Co.*, 15 I. C. C., 305, and in *Eagle Ice Co. v. C., M. & St. P. Ry. Co.*, 37 I. C. C., 250. We said in the latter case, at page 258:

In warm weather a perishable commodity like ice requires good cars for its transportation. It is the duty of defendants to furnish such cars upon reasonable request. *Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co.*, 34 I. C. C. 60. Complainants, however, demand more than good box cars. They demand insulated cars. While defendants have voluntarily furnished a large number of refrigerator, vegetable, and other insulated cars, the record indicates that such cars cost more, are more expensive to maintain, wear out quicker, and are less adaptable to other traffic than are ordinary box cars. It is also clear that the use of the insulated car in ice traffic increases the value of the service to the shipper, as the shrinkage is materially decreased and the cost of preparing the car with hay and paper is eliminated. The seasonal movement of the ice has been noted. For these reasons, an additional charge of 10 cents per ton, applicable to shipments transported in refrigerator or insulated cars, would be justified. *Mountain Ice Co. v. D., L. & W. R. R. Co.*, *supra*. It should be understood, however, that the publication of such a rate will require the defendants to furnish refrigerator or insulated cars upon reasonable request therefor. And if different rates are published, dependent upon the equipment used, the shipper's right to order and to have the equipment desired must be recognized.

We find that the \$6 per car charge assailed was unlawfully collected by defendant on the shipments. The unlawful charges should be refunded to complainant immediately.

An appropriate order will be entered.

39 I. C. C.

No. 8058.

W. H. SETTLE & COMPANY

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY
ET AL.

Submitted November 18, 1915. Decided May 19, 1916.

Joint rates on lumber from designated points of origin in the south to Madisonville, Ohio, within the corporate limits of Cincinnati, Ohio, but outside of the switching limits, are made on the basis of the rates to and from Cincinnati. Oakley, which is adjacent to Madisonville, is inside the switching limits of Cincinnati, and takes Cincinnati rates. The aggregates of the rates to Oakley and from Oakley to Madisonville are lower than the Cincinnati combinations. Higher rates to Madisonville than to Cincinnati not found unreasonable or unduly prejudicial to complainants. Present rates from Cincinnati and Oakley used in combination for through transportation to Madisonville not found unreasonable or unduly prejudicial, but found unlawful to the extent that they exceed the aggregates of intermediate rates to and from Oakley.

H. C. Barnes and C. E. Cotterill for complainant.

W. A. Eggers, O. S. Lewis, and Edward Barton for Baltimore & Ohio Southwestern Railroad Company.

E. D. Mohr for Louisville & Nashville Railroad Company.

R. Walton Moore and E. H. Hart, jr., for other southern lines.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are W. H. Settle and G. W. Clephane, copartners, dealing in coal, flour, feed, and building material at Cincinnati, Ohio, under the firm name of W. H. Settle & Company. By complaint, filed May 29, 1915, they allege that the rates charged by defendants for the transportation of lumber in carloads from points in Alabama, Florida, Louisiana, Mississippi, and Tennessee to Madisonville, Ohio, are unreasonable and unjustly discriminatory to the extent that they exceed the rates contemporaneously applicable on like traffic from the same points of origin to Cincinnati.

Madisonville, where complainants' lumber yard is located, is within the corporate limits of Cincinnati at the northeastern extremity of the city. Cincinnati has grown to include suburbs which formerly were separate communities and which still retain their local names. Madisonville is one of these suburbs, and was annexed to Cincinnati

about four years ago. Immediately adjacent to Madisonville on the west is a community known as Oakley, which also forms a part of Cincinnati. The boundary line of the switching limits of Cincinnati passes between Oakley and Madisonville, including Oakley, but excluding Madisonville. Madisonville is served principally by the Baltimore & Ohio Southwestern Railroad. The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad also reaches Madisonville, but does very little business there. The distance from the Baltimore & Ohio Southwestern freight house in Cincinnati to the station at Oakley is 11.8 miles. Madisonville is 1.7 miles from Oakley, while complainants' lumber yard and sidetrack is 0.7 mile farther from Oakley. A carload rate of 21 cents per 100 pounds applies on lumber from various competitive points in the producing states to any point within the switching limits of Cincinnati, the southern roads absorbing connecting line switching charges at destination. The rate from Cincinnati to Madisonville, the first point beyond the switching limits on the Baltimore & Ohio Southwestern, is 3.7 cents, and joint rates apply on lumber to Madisonville from practically all of the points of origin, based on the rates to and from Cincinnati. Combination rates based on Cincinnati apply from a few points.

Complainants contend that Madisonville should be included within the switching limits of Cincinnati and take Cincinnati rates. The switching limits extend on the west to North Bend on the Baltimore & Ohio Southwestern, 15.1 miles from Cincinnati and 4.1 miles beyond its corporate limits, and to Cleves on the Cleveland, Cincinnati, Chicago & St. Louis Railroad, 16.1 miles beyond the city and 5.1 miles beyond the corporate limits. On the north they extend to Woodlawn on the Cincinnati, Hamilton & Dayton Railroad, 13.6 miles from Cincinnati and beyond the corporate limits. Complainants argue that if it is proper to extend the switching limits to include North Bend on the west they should also include Madisonville on the east. Numerous large industries are said to be located on the Baltimore & Ohio Southwestern between Madisonville and Cincinnati, which provide a greater volume of tonnage than is furnished by industries situated between North Bend and Cincinnati. Complainants' freight received at Madisonville amounts to approximately 400 cars per year, of which about 90 cars contain lumber from the south. Complainants testified that their competitors in the lumber business are located at Oakley, Hyde Park, Norwood, Evanston, and Linwood, and that all of those points, being within the Cincinnati switching limits, have an advantage over complainants to the extent that the rate to Madisonville exceeds the Cincinnati rate.

Defendants stated that Madisonville was a residential section of Cincinnati, with few industries receiving carload traffic. The Baltimore & Ohio Southwestern's break-up yards are at Oakley, and proceeding toward Cincinnati its line traverses a very highly developed industrial district. There are more than 100 industries having private sidetrack connections with the Baltimore & Ohio Southwestern. The territory in the direction of North Bend is not so highly developed industrially, but contains a number of large industries. The chief reason for including North Bend within the switching limits is said to have been the competition of the Ohio River and the Cleveland, Cincinnati, Chicago & St. Louis Railroad. The switching limits of Cincinnati have been gradually extended with the industrial growth of the city. The boundary line is not inflexible, but defendants contend that under existing circumstances it is properly drawn between Oakley and Madisonville. They assert that the inclusion of Madisonville within the corporate limits of Cincinnati has no bearing upon the transportation situation and that if the switching limits were extended to include Madisonville the next town beyond might equally demand inclusion and so on indefinitely. Madisonville takes Cincinnati rates from the east and west because it is intermediate to Cincinnati from the east and to Hamilton, Ohio, from the west, Hamilton being a Cincinnati rate point.

It is shown for the Cincinnati, New Orleans & Texas Pacific Railway that the Cincinnati rate applies to points on other roads within the switching limits only on shipments from points beyond its rails or from competitive points on its rails, and that this arrangement is necessary to enable it to compete for traffic destined to points off of its rails at Cincinnati, which could be forwarded over another route and delivered at the Cincinnati rate. The application of the Cincinnati rate to points off the rails of the southern lines necessitates the absorption by them of connecting line switching charges out of the through rate to Cincinnati. Competition forces the absorption on traffic destined to important industrial suburbs such as Oakley, Norwood, East Norwood, etc., but the same conditions do not obtain for traffic to Madisonville, which is a residential section. The southern lines object strenuously to the further impairment of their revenue which would result from increasing the amount of the switching charges, which would have to be absorbed for the application of the Cincinnati rate to Madisonville. A witness for the Louisville & Nashville Railroad testified that the present switching district at Cincinnati, including territory from 18 to 16 miles in extent, is larger than at other points on its line. The switching districts at other points seldom exceed 4 or 5 miles, and the connecting line

switching charges absorbed at Cincinnati greatly exceed the absorptions at other points.

We find that the maintenance of higher rates on lumber from points south of the Ohio River to Madisonville than to Cincinnati is not unreasonable and does not unduly prejudice complainant at Madisonville.

Complainants further object to the present rates on lumber from designated southern points of origin to Madisonville because they exceed the rates to and from Oakley, contending that through rates should be constructed by adding to the rates to Cincinnati, which also apply to Oakley, a reasonable rate from Oakley to Madisonville. The through rates are assailed formally, but the testimony relates exclusively to the rates north of the Ohio River.

Prior to 1912 the rate from Oakley to Madisonville was 3.5 cents per 100 pounds, which was reduced in July, 1912, to 3 cents, and in September, 1912, to 1 cent. The 1-cent rate remained in effect until November, 1914, when it was increased to 3.7 cents, which rate was subsequently ordered reduced to 2.5 cents, in a proceeding before the Ohio Railroad Commission. In complying with the state commission's order the Baltimore & Ohio Southwestern restricted the application of the 2.5-cent rate to intrastate traffic. The present rate applicable to the transportation of interstate shipments of lumber between Oakley and Madisonville is the sixth-class rate of 3.2 cents per 100 pounds. At the present time, therefore, the aggregate of intermediate rates to and from Oakley on lumber originating at competitive points in the south is 24.2 cents, or 0.5 cent less than the joint rate applying over the same route.

Complainants attempted to show that even the 2.5-cent intrastate rate from Oakley to Madisonville was unreasonable, comparing it with a rate of 1 cent per 100 pounds from Cincinnati to Oakley, and with other rates applicable between points within the switching limits. But defendants explained that the 1-cent rate was published from Oakley to Madisonville, not because it was considered reasonable, but because it was understood that the southern lines were willing to publish a rate to Madisonville composed of the Cincinnati rate to Oakley plus 1 cent beyond, they to absorb switching charges to Oakley, thus allowing the Baltimore & Ohio Southwestern 1 cent over its switching charge, to Oakley for the transportation from Cincinnati to Madisonville. After the 1-cent rate was established the southern lines refused to participate in the rate to Madisonville on the Oakley combination, and it was canceled. The Baltimore & Ohio Southwestern states that the 2.5-cent rate prescribed by the Ohio Railroad Commission was the maximum amount allowed

under Ohio state statutes, and that the statute fixing maximum rates has since been repealed.

A witness for the Baltimore & Ohio Southwestern testified that deliveries within the switching limits of Cincinnati are made by switching movements which are stated to be the cheapest transportation service furnished by the railroad; whereas deliveries to Madisonville are made by local freight trains, a more expensive service. Deliveries at Madisonville by switching movements were attempted at one time, but were found impracticable because of the delay in getting to and from Madisonville, caused by the interference of regular trains with the movements of the switch engines.

The Baltimore & Ohio Southwestern applies its full sixth-class rates from Cincinnati to Madisonville and points beyond for a distance of 85 miles, and the Madisonville rate is not out of line, distance considered, with rates from Cincinnati to the first points outside of the switching limits on other roads. It was testified for defendants that rates from points south of the Ohio River to points north of it are invariably made on the basis of the Ohio River combination, and rates were cited from numerous representative points in the south to points just outside of the Cincinnati switching limits which compare favorably with the rates to Madisonville.

We find that the present rates on lumber in carloads from Cincinnati and Oakley to Madisonville used as components of the rates charged for through transportation from the southern points of origin involved are not shown to be unreasonable or unduly prejudicial to complainant, but that the joint rates applicable to the transportation of lumber in carloads from the points of origin to Madisonville through Oakley are, and for the future will be, unlawful to the extent that they exceed the aggregates of the rates to and from Oakley.

29 I. C. C.

No. 7642.
DETROIT STOVE WORKS
v.
WABASH RAILROAD COMPANY ET AL.

Submitted September 10, 1915. Decided May 19, 1916.

1. Minimum weight applied by defendants on a carload of gas stoves from Detroit, Mich., to Marshall, Tex., found to have been unreasonable. Reasonable minimum weight prescribed for the future.
2. Claim for reparation found to have been abandoned.

M. H. Owen for complainant.

E. S. Macken for Wabash Railroad Company.

C. C. P. Rausch for St. Louis, Iron Mountain & Southern Railway Company and Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of stoves, furnaces, and heating apparatus at Detroit, Mich. By complaint, filed January 4, 1915, it alleges that the charges collected by defendants for the transportation of a carload of gas stoves shipped March 21, 1911, from Detroit, Mich., to Marshall, Tex., were unreasonable and unjustly discriminatory by reason of the minimum weight applied. Reparation is asked and the establishment of a reasonable minimum for the future. The claim was presented to the Commission informally February 28, 1913. The complaint also alleged that the charges collected exceeded the charges assessable under the tariffs applicable to the shipment, but complainant acknowledged at the hearing that the legal tariff rate had been applied.

The shipment weighed 21,000 pounds and moved: Wabash Railroad; St. Louis, Iron Mountain & Southern Railway; Texas & Pacific Railway. Charges were collected in the sum of \$233.85 on the basis of a commodity rate of 87 cents per 100 pounds and a minimum weight of 26,880 pounds provided for the 40-foot car in which the shipment was loaded. Complainant contends that the minimum weight was and is excessive to the extent that it exceeded the 20,000-pound minimum provided for carload shipments of gas stoves origi-

nating at St. Louis, Mo., and Chicago, Ill., regardless of length of car used.

Effective February 7, 1911, defendants provided a minimum of 24,000 pounds for gas stoves in cars 36 feet 6 inches in length, with graduated minima for larger cars. On July 7, 1911, the minimum was changed to 20,000 pounds for cars 42 feet 6 inches and under, with graduated minima for longer cars. A minimum of 20,000 pounds for any size car applied from September 7, 1911, until March 8, 1913, when a minimum of 24,000 pounds was established for cars 46 feet 6 inches long and less, with graduated minima for larger cars.

An exhibit filed by complainant shows the actual weights of 673 carloads of gas stoves shipped by various stove manufacturers, including complainant, from Detroit and St. Louis during a period of 18 months in 1912 and 1913. The cars enumerated varied in length from 36 feet to 50 feet, averaging 40 feet 4 inches in length and 21,916 pounds in contents. The average loading of 348 cars 40 feet long, the size of car generally used by complainant, is given as 22,176 pounds; the average loading of 36-foot cars, a size not frequently used, as 17,773 pounds. The minimum weights provided for gas stoves in the three principal classifications are: 16,000 pounds, with graduated minima subject to rule 27 in the official classification; 16,000 pounds, subject to rule 24 in the southern; 20,000 pounds in the western. Complainant's witness stated that as chairman of the National Association of Stove Manufacturers he had been notified by the chairman of the Uniform Classification Committee that a minimum weight of 20,000 pounds had been recommended for gas stoves.

The charges on the shipments at the present rates to and from St. Louis would be assessed as follows: 17.3 cents per 100 pounds, 24,000 pounds minimum, applicable only to cars 36 feet 6 inches long and under from Detroit to St. Louis; 71 cents per 100 pounds, 21,000 pounds actual weight, St. Louis to Marshall. These charges would be \$20.34 less than the charges assessed at the present through rate of 87.9 cents, minimum 24,000 pounds.

No evidence was offered by the defendants, and we find that a minimum weight in excess of 20,000 pounds on carload shipments of gas stoves from Detroit, Mich., to Marshall, Tex., was and for the future will be unreasonable. Complainant has competitors at Chicago and St. Louis who manufacture substantially the same kind of gas stoves that complainant ships from Detroit, but no unjust discrimination is shown. It is not intended by this finding to express disapproval of the graduated minima scheme as a general proposition.

As previously stated informal presentation of the claim was made February 28, 1913. It was found and complainant was notified on May 8, 1913, that if it decided to pursue the matter further formal complaint would be necessary. Formal complaint was not filed within a reasonable time after the notice thus given and the claim must be considered to have been abandoned. *Rule III of Rules of Practice; Dillon Coal & Transfer Co. v. O. S. L. R. R. Co.*, 28 I. C. C., 91; *Palen & Burns v. L. V. R. R. Co.*, Docket No. 4784, unreported; and *Hoopes & Sons v. C., M. & St. P. Ry. Co.*, Docket No. 6016, unreported.

An appropriate order will be entered.

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No. 8249.¹

R. J. REYNOLDS TOBACCO COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL

Submitted January 20, 1916. Decided May 24, 1916.

Complainants attack the rates on tobacco from local stations on the line of the Louisville & Nashville Railroad in central Kentucky to Winston-Salem and Reidsville, N. C., and South Boston, Martinsville, and Danville, Va., as unreasonable, unjustly discriminatory, and in violation of the fourth section of the act in that they exceed the rates from Cincinnati, Louisville, and certain central Kentucky junction points; *Held:*

1. The Louisville & Nashville Railroad Company's Fourth Section Application No. 1952, in so far as by it authority is sought to continue rates on tobacco from Cincinnati and points in Kentucky to the named destinations which are lower than the rates contemporaneously applicable on like traffic from intermediate points on its line in Kentucky, should be denied.
2. Rate of 45 cents per 100 pounds on tobacco in carloads from Richmond, Ky., to Reidsville found to have been unreasonable in so far as it exceeded a rate of 44 cents, and reparation awarded.

J. L. Graham for R. J. Reynolds Tobacco Company.

T. T. Harkrader for American Tobacco Company.

William Burger for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

These cases involve similar issues, were heard together, and will be disposed of in one report. Rates are stated herein in cents per 100 pounds, and except as otherwise noted the places named are in the state of Kentucky.

In No. 8249, complainant, a corporation engaged in the manufacture of tobacco at Winston-Salem, N. C., alleges that defendants' commodity rates on unmanufactured leaf tobacco, ranging from 38 to 53 cents, but generally not over 45 cents, from various local points in Kentucky, on the main line and on branch lines of the Louisville & Nashville Railroad, hereinafter called defendant, to Winston-Salem and to Martinsville, Danville, and South Boston, Va., are unreasonable, unjustly discriminatory, and, as to points of origin which are intermediate, in violation of the long-and-short-haul provision of the

¹ The proceeding also embraces complaint in No. 8371, American Tobacco Company v. Louisville & Nashville Railroad Company et al.; and Portions of Fourth Section Application No. 1952.

fourth section of the act in that they exceed the rates from Cincinnati, Ohio, Louisville, Maysville, and Kentucky junction points. The prayers are for rates on tobacco of 33 cents, any quantity, to Winston-Salem, and 30 cents, less than carloads, to each of the Virginia points. These are the rates from the Ohio River crossings and interior Kentucky junction points.

Complainant in No. 8371 is a corporation engaged in the manufacture of tobacco at various points in the United States. It alleges that defendant's joint rate of 45 cents on unmanufactured leaf tobacco from Richmond, a local point on defendant's line to Reidsville, N. C., is violative of the act in the same respects as alleged in No. 8249. Reparation is asked on 16 shipments that moved in the months of December, 1914, and January and February, 1915.

Fourth Section Application No. 1952, filed by defendant, in so far as by it authority is sought to continue rates on tobacco from Cincinnati and from points in Kentucky to the destinations involved which are lower than the rates contemporaneously applicable on like traffic from intermediate points in Kentucky on defendant's line was heard with these complaints.

Although the rates are alleged to be unreasonable in that they are higher than the rates from junction points in interior Kentucky, and from local points on the lines of the Southern Railway, the Cincinnati, New Orleans & Texas Pacific Railway, and the Norfolk & Western Railway, the rates of which companies conform to the long-and-short haul rule of the fourth section, and unreasonable and unjustly discriminatory as compared with the rates of defendant applicable from Ohio River crossings and from junction points on its line in Kentucky, those issues are really incidental to the main contention that departures from the long-and-short haul rule are not justified, which departures are reflected in the rates from points not intermediate.

Winston-Salem, South Boston, and Martinsville are reached by the Norfolk & Western Railway, and Danville by that road in connection with the Danville & Western Railway. Winston-Salem and South Boston are also reached by the Southern Railway. These carriers, with the exception of the Danville & Western, are named as defendants, as they participate in the joint rates applicable from the points of origin in question. Joint rates are not published from defendant's local stations in central Kentucky to Danville, Martinsville, or South Boston. The Norfolk & Western initiates at Cincinnati like traffic destined to the complaining points, as does the Southern Railway at Louisville, Shelbyville, Versailles, Lexington, and Georgetown.

Rates on unmanufactured leaf tobacco, in hogsheads, from Cincinnati, Louisville, Maysville, Frankfort, Versailles, Midway, and 39 I. C. C.

junction points of defendant with other carriers, to Winston-Salem and Reidsville are 33 cents, any quantity. From these same points of origin to the Virginia destinations the rates are 30 cents, less than carloads, and 27½ cents, carloads. The rates from the local points are made on the basis of the aggregates of the local rates to an Ohio River crossing or a junction point in Kentucky, and the joint or local rate beyond, and therefore are higher than the rates from Cincinnati, Louisville, Maysville, or Kentucky junction points by the amount of the local rate to the basing point.

Defendant's testimony was largely devoted to an historical review of the manner in which the rates from Cincinnati and Louisville, as representative points, to Carolina territory have been constructed. The situation has been fully stated in *Rates to North Carolina Points*, 29 I. C. C., 550; *Massie & Pierce Lumber Co. v. N. & W. Ry. Co.*, 33 I. C. C., 14, 17, 18, 24; *City of Danville, Va., v. S. Ry. Co.*, 34 I. C. C., 430; and *Spartanburg Chamber of Commerce v. S. Ry. Co.*, 34 I. C. C., 484, and repetition is unnecessary here. It is sufficient to say that defendant's contention is that the Chesapeake & Ohio Railway in its endeavor to share in the traffic from Chicago, Ill., and other points in central freight association territory to points in the southeast applied from points on its line in Kentucky proportional rates to the Virginia cities which represent the remainder of the through local rates from Chicago to the Virginia cities after deducting the local rates from Chicago to the Ohio River crossings; that these proportional rates were applied from its intermediate junction points, Lexington, Maysville, and Winchester; that the southern carriers operating from the Ohio River to the southeast were compelled to meet those rates; and in all instances those carriers, other than defendant, applied them from intermediate stations as maxima. Defendant meets these rates at its junction points in Kentucky.

Complainant in No. 8249 proceeds on the assumption that traffic from Cincinnati to the destinations in question moves via defendant's line through La Grange and Louisville to Jellico, Tenn., a distance of 312 miles, and thence over the Southern Railway to Winston-Salem. Defendant, however, has the direct line from Cincinnati to Jellico via Corbin, distance 215 miles. It also has a line through Corbin to Norton, Va., a distance of 304 miles, where it connects with the Norfolk & Western. The distance from Cincinnati to Winston-Salem over defendant's line in connection with the Norfolk & Western is 57 miles longer than via its route in connection with the Southern Railway at Jellico. Defendant contends, however, that it is entitled under section 15 of the act to its long haul and to route its traffic through Norton. While the routing under the tariff is unrestricted, it is asserted that the Norton route is the only one used. The route used for this traffic from Maysville is through Paris and Norton, and

that from Louisville is through Lebanon Junction, Sinks, and Norton. Defendant therefore urges that many points which complainant asserts are intermediate are in fact not intermediate via the route the traffic moves.

The Frankfort & Cincinnati Railway, an independently operated railroad, connects with the Cincinnati, New Orleans & Texas Pacific at Georgetown and with defendant at Paris. The present rates to Winston-Salem from Paris of 40 cents, less than carload, and 33 cents, carload, minimum 17,000 pounds, were established when this road was controlled by defendant. It is stated that these rates are maladjusted and will be canceled and the lowest combinations applied. Defendant asserts that it is making a careful check of its rates for the purpose of discovering similar discrepancies, and that such as are found to exist will be corrected.

The Chesapeake & Ohio operates from Cincinnati to the east via Maysville and Ashland, and from Louisville, through Shelbyville, Frankfort, Lexington, and Winchester, to Ashland, where it connects with the Cincinnati division. It uses the tracks of defendant from Louisville to Lexington under an operating agreement. The Cincinnati, New Orleans & Texas Pacific runs in a southerly direction from Cincinnati through Georgetown, Lexington, and Nicholasville to Junction City, where it crosses the line of defendant, and on through Harriman Junction, Tenn. The Norfolk & Western operates from Cincinnati through Kenova, W. Va., to Graham, Va., where connection is made with its line from Norton. The Southern Railway has a line from Louisville through Shelbyville and Versailles to Danville, where it connects with the Cincinnati, New Orleans & Texas Pacific. The 30-cent and 33-cent rates apply from the Ohio River crossings on these lines, and also from intermediate points, with the exception of a few points on the line of the Chesapeake & Ohio between Cincinnati and Ashland. The distances from the local points under the rates complained of are, generally, between 550 and 600 miles. From Cincinnati, Maysville, Shelbyville, Frankfort, Versailles, Nicholasville, Midway, and Louisville, via the line of defendant to Norton and the Norfolk & Western to Winston-Salem, the distances range from 540 to 636 miles. From Cincinnati to Winston-Salem over the Norfolk & Western direct is 578 miles; from Cincinnati to Winston-Salem over the Chesapeake & Ohio to Lynchburg and the Southern Railway beyond, 613 miles. The short-line distance from Louisville to Winston-Salem is 564 miles, over the line of defendant and the Southern Railway. Via this route the distance to Winston-Salem from Cincinnati is substantially the same as the short-line distance via the Norfolk & Western direct. The record does not show the distances via the different routes from the points of origin to the

Virginia destinations. For this reason it has been necessary for us to figure them. Our calculations show that the distances from Cincinnati to Martinsville, Danville, and South Boston via the line of defendant to Norton and the Norfolk & Western beyond are from 57 to 80 miles greater than via the direct lines through the Virginia cities. To these destinations defendant's route through Norton from Cincinnati is from 30 to 120 miles shorter than its route through Jellico in connection with the Southern. The distances from the central Kentucky junction points via both of these routes are less than those from Cincinnati.

Unmanufactured tobacco in hogsheads under southern classification is rated fourth class. Rates on tobacco from Cincinnati to Winston-Salem were and are made by using the fourth-class proportional rate to the Virginia cities plus an arbitrary beyond. The rates to the Virginia points were and are constructed in the same manner. Prior to June, 1912, the rate on leaf tobacco, any quantity, from the Ohio River to Winston-Salem was 40 cents, composed of the fourth-class proportional rate to the Virginia cities plus 25 cents beyond. At that time the fourth-class rate from Cincinnati to Winston-Salem via the Norfolk & Western was 42 cents; at present it is 40 cents. Effective June 15, 1912, the Norfolk & Western established a carload rate on leaf tobacco in hogsheads of 33 cents, minimum 17,000 pounds, from Cincinnati to Winston-Salem. This was based on the 15-cent fourth-class proportional rate to the Virginia cities and 18 cents beyond. About the same time the Chesapeake & Ohio established the same rate to Winston-Salem from Cincinnati, Louisville, Lexington, and Winchester. On August 20, 1912, the same rate was established from points on their lines by the Southern Railway and the Cincinnati, New Orleans & Texas Pacific Railway, and by defendant from Louisville and Cincinnati. Subsequently it was made to apply on unmanufactured tobacco in hogsheads, any quantity. The present fourth-class rates from Cincinnati to the other destinations are: To Reidsville, 39 cents; to Martinsville, Danville, and South Boston, 33 cents. The local fourth-class rate from Cincinnati and Louisville to the Virginia cities is 29 cents. Defendant contends that the proper rate on tobacco from the Ohio River to Winston-Salem should be this rate and the 18-cent arbitrary beyond, or a through rate of 47 cents.

Defendant asserts that the proportional scale to the Virginia cities was established by the Chesapeake & Ohio in part to enable Cincinnati dealers in competition with Chicago to distribute to points in Carolina territory commodities drawn by them from northern sources of supply, but that this condition did not, and does not now, obtain with reference to tobacco. It, therefore, urges that the use

of the proportional basing class rates evolved from the trunk line adjustment in making rates on tobacco is illogical and unwarranted, and that it should not be held responsible for the action of the Chesapeake & Ohio.

Defendant serves the principal tobacco-producing sections in Kentucky, and its aggregate mileage therein is much greater than the combined mileages of the Southern and the Cincinnati, New Orleans & Texas Pacific. It asserts, therefore, that those lines had not so much to lose by conforming their rates to the long-and-short-haul rule as it would have to lose if fourth section relief to it is denied.

Defendant introduced numerous exhibits containing rates which it offers in comparison with those here under attack. In one exhibit the any-quantity rates on unmanufactured leaf tobacco, in hogsheads, from defendant's stations in Kentucky and Tennessee to Cincinnati, Louisville, Henderson, St. Louis, Mo., and Mobile, Ala., contains 1,689 rates, the averages of the totals being: Average haul, 292 miles; average rate, 31 cents; average rate per ton-mile, 2.13 cents. These data are compared with those for the rates under attack, viz: Average haul, 578 miles; average rate, 47 cents; average rate per ton-mile, 1.63 cents.

One of defendant's exhibits compares rates on leaf tobacco, any quantity, from points in Virginia, North Carolina, South Carolina, and Kentucky to various destinations with the rates under attack. A few illustrations are representative and will suffice: From Tunnel Hill, Ky., to Winston-Salem, 600 miles, 39 cents, versus Hamer, S. C., to New York, N. Y., 599 miles, 54 cents; Long Run to Winston-Salem, 640 miles, 39 cents, versus Wilson, N. C., to Rochester, N. Y., 640 miles, 48 cents; Eagle to Winston-Salem, 677 miles, 45 cents, versus Rocky Mount, N. C., to Boston, Mass., 673 miles, 52 cents. In some instances the rates under attack are lower than the aggregate of the local rate to a concentrating point and the competitive rate beyond.

The principal tobacco markets on the Ohio River are Cincinnati and Louisville, and the source of their supply is the producing territory in Kentucky. At those markets tobacco is sold in hogsheads by type or sample. The interior Kentucky markets, of which Lexington is the largest, are loose leaf markets. There is comparatively little tobacco brought into Cincinnati and Louisville by wagon, but a considerable quantity is so hauled into Lexington. It is asserted that whatever quantity of tobacco may be hauled into Cincinnati and Louisville by wagon is less than that consumed locally. Rail transportation to the markets is generally used. Consequently, tobacco distributed from concentrating points pays a total charge composed of the local rate to such point and the rate beyond. For example, Louisville draws tobacco from Sparta under the local rate 39 I. C. C.

of 15 cents. The total rate from Sparta to Winston-Salem on tobacco concentrated at Louisville is therefore 48 cents. Tobacco may be shipped direct from Sparta to Winston-Salem for 45 cents. The rates to Winston-Salem from stations Cynthiana to Robinson are 42 and 43 cents. The total charge on tobacco concentrated at Cincinnati from these stations is 50 cents. Due to such prior movement, defendant contends that the depressed Ohio River crossings and junction points rates are in effect "from beyond" proportional rates. Defendant emphasizes its statement that there is no demand from the producers for a reduction in the rates on tobacco to Winston-Salem, and that a reduction in the rates herein attacked would not benefit either the producer of the leaf or the consumer of the manufactured tobacco.

Complainant in No. 8249 purchases in Kentucky annually some 25,000,000 pounds of leaf tobacco, of which 8,300,000 pounds are drawn direct from defendant's local stations for movement to Winston-Salem. The distribution is roughly as follows:

From—	Pounds.	Miles.	Rate.
Richmond.....	1,250,000	517	41
Cynthiana.....	1,000,000	570	42
Carlisle.....	2,000,000	573	42
Pleasureville.....	150,000	594	45
Falmouth.....	600,000	595	45
Eminence.....	300,000	595	45
Springfield.....	950,000	636	45
Horse Cave.....	400,000	642	45
Glasgow.....	450,000	652	51
Sparta.....	500,000	649	45
Bloomfield.....	600,000	634	45

¹ Applies on carload shipments, minimum 17,000 pounds; less than carload, 45 cents.

Only four of the above-named points, Richmond, Cynthiana, Carlisle, and Falmouth, are directly intermediate via the route the traffic moves and the rates therefrom range from 8 to 12 cents above the competitive rate.

The shipments upon which reparation is sought in No. 8371 were in hogsheads, weighed 298,070 pounds, and moved over two routes from Richmond to Reidsville. Two of them moved over the line of defendant to Nicholasville, over the Cincinnati, New Orleans & Texas Pacific to Harriman Junction, thence Southern Railway to destination, and weighed 38,075 pounds; the other 14 moved over the line of defendant to Norton, the Norfolk & Western to Lynchburg, thence Southern Railway to destination, and weighed 259,995 pounds. Each of these shipments weighed less than 22,000 pounds. Richmond is 119 miles south of Cincinnati, and Reidsville is a local station on the Southern Railway 90 miles south of Lynchburg, 24 miles south of Danville, and 52 miles north of Winston-Salem. It is asserted that the joint rate of 45 cents charged by defendant was constructed on a 12-cent, any-quantity, commodity rate to Lexington added to the any-

quantity rate of 33 cents beyond. There was in effect at the same time a commodity carload rate from Richmond to Winchester on loose tobacco of 8 cents, minimum 22,000 pounds, and a carload rate on unmanufactured tobacco of 33 cents from Winchester, minimum 17,000 pounds, to Reidsville. This latter rate, however, did not apply over defendant's line in connection with the Cincinnati, New Orleans & Texas Pacific. Effective August 29, 1915, defendant established a carload rate on unmanufactured tobacco of 41 cents, minimum 17,000 pounds, from Richmond to Reidsville. At the time these shipments moved there was no commodity rate in effect on tobacco in hogsheads from Richmond to Winchester, but an 11-cent any-quantity class rate applied. The routing on the commodity rate of 33 cents from Winchester was applicable via the line of defendant, but not in connection with the Cincinnati, New Orleans & Texas Pacific. As Richmond is south of Winchester traffic destined to this territory would not ordinarily move through Winchester. However, under rule 5 (b) of our Tariff Circular 18-A the Winchester combination should be applied in the absence of a joint rate. The combination on Winchester using the 11-cent class rate plus the 33-cent rate beyond would make a through rate of 44 cents applicable over the line of defendant in connection with the Norfolk & Western. By reducing the 45-cent rate to 41 cents defendant does not concede that the 45-cent rate was unreasonable. We are of the opinion, and find, that the 45-cent rate charged on the 14 shipments that moved over the line of defendant in connection with the Norfolk & Western was unreasonable in so far as it exceeded the then existing Winchester combination of 44 cents. We further find that complainant made the shipments as described and paid and bore charges thereon as stated; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate found reasonable herein; and that it is entitled to reparation in the sum of \$26, with interest from February 16, 1915.

As the 45-cent rate did not apply from Richmond over defendant's line to Nicholasville, the Cincinnati, New Orleans & Texas Pacific to Harriman Junction and the Southern beyond, the only rate lawfully applicable via this route appears to have been the local fourth-class rate of 15 cents from Richmond to Nicholasville, plus a 33-cent commodity rate beyond, or a through rate of 48 cents. It appears, therefore, that unless these shipments were misrouted by defendant there is an outstanding undercharge on them of 3 cents per 100 pounds. The facts of record are not sufficient to determine whether or not defendant misrouted these shipments.

In handling this tobacco traffic from points in central Kentucky to Winston-Salem, Reidsville, South Boston, Martinsville, and Danville
201 C. C.

defendant is under no substantial disadvantage as compared with the direct lines operating through the Virginia cities. It follows, therefore, that there is no justification for the granting of fourth section relief.

From all the facts and circumstances of record we are of the opinion, and find, that defendants' Fourth Section Application No. 1952, in so far as by it authority is sought to continue rates on tobacco from Cincinnati and points in Kentucky to Winston-Salem, Reidsville, Danville, Martinsville, and South Boston which are lower than the rates contemporaneously applicable on like traffic from intermediate points on its line in Kentucky, should be denied. The record contains no evidence upon which any of the present rates at issue can be found to be unreasonable *per se*, or unjustly discriminatory, except under the fourth section.

Orders in conformity with the findings herein will be entered.

89 I. C. C.

No. 8108.
BOWIE LUMBER COMPANY, LIMITED,
v.
MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAM-
SHIP COMPANY ET AL.

Submitted December 14, 1915. Decided May 19, 1916.

Defendants' rate on hewn cypress crossties in carloads from Bowie, La., to Eureka, Tex., found to be unreasonable to the extent that it exceeds the rate contemporaneously maintained on cypress lumber. Defendants required to maintain a rate on hewn cypress crossties not in excess of the rate contemporaneously applicable on cypress lumber.

E. W. McKay and *M. M. Lemann* for complainant.

C. W. Owen, Fred H. Wood, and Denegre, Leovy & Chaffe for Morgan's Louisiana & Texas Railroad & Steamship Company, Louisiana Western Railroad Company, and Texas & New Orleans Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Bowie, La. By complaint, filed June 23, 1915, it alleges that defendants' rate for the transportation of hewn cypress crossties from Bowie to Eureka, Tex., is unreasonable and unjustly discriminatory to the extent that it exceeds the rate on cypress lumber. A reasonable and nondiscriminatory rate is asked.

Bowie is located 41 miles west of New Orleans, La., on the line of Morgan's Louisiana & Texas Railroad & Steamship Company, hereinafter referred to as the Morgan line. Eureka is a local station on the Missouri, Kansas & Texas Railway of Texas 5 miles northwest of Houston, Tex., and 327 miles from Bowie.

Prior to November 26, 1914, the class D rate of 31 cents per 100 pounds, governed by defendants' exceptions to western classification, applied on cypress crossties in carloads from Bowie to Eureka. In a tariff effective November 26, 1914, defendants provided that the rates on cypress lumber would apply on cypress crossties from points on the Morgan line to points on the Missouri, Kansas & Texas Railway of Texas. January 26, 1915, hewn cypress crossties were excepted from the application of the rates on lumber and November 13, 1915, sawed crossties were likewise excepted. This had the effect of

reestablishing the class D rate formerly applicable on cypress cross-ties from Bowie to Eureka. Prior to June 18, 1915, the rate on cypress lumber in carloads from Bowie to Eureka was 12 cents per 100 pounds, while to Houston the rate was 13.75 cents. In order to correct the fourth section departure a rate of 13.75 cents was established on that date to Eureka, which rate is still in effect. As the rate assailed represents an increase since January 1, 1910, the burden of justifying it rests upon the defendants.

The rate on cypress cross-ties in carloads from Bowie to Houston is 13.75 cents per 100 pounds and from Houston to Eureka 5 cents per 100 pounds, making an aggregate of 18.75 cents. The joint rate of 31 cents from Bowie to Eureka violates the aggregate of the intermediates rule of the fourth section, as it is not protected by any fourth section application.

We have repeatedly held that the rates on cross-ties between given points should not exceed the rates contemporaneously in effect on lumber of the kind of wood from which the cross-ties are made, and the record herein presents no reason for making an exception to this rule. No specific testimony was offered to support the allegation of unjust discrimination.

We find that defendants have failed to justify the increased rate on hewn cypress ties involved and that a reasonable rate for the future on hewn cypress ties from Bowie to Eureka should not exceed the rate contemporaneously maintained on cypress lumber from and to the same points. An order will be entered accordingly.

39 I. C. C.

No. 8198.
BON MARCHE

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.

Submitted December 16, 1915. Decided May 19, 1916.

Rate charged for the transportation of a spring delivery wagon from Chicago, Ill., to Seattle, Wash., found to have been in accordance with the lawfully published tariff and not to have been unreasonable or unjustly discriminatory. Complaint dismissed.

S. J. Wettrick for complainant.

F. M. Barkwill for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation which owns and operates a department store at Seattle, Wash. By complaint, filed July 29, 1915, it alleges that the rate charged by defendant for the transportation of a spring delivery wagon, shipped August 31, 1912, from Chicago, Ill., to Seattle, was unlawful, unreasonable, and discriminatory. Reparation is asked and the establishment of a reasonable rate for the future. The claim was presented to the Commission informally August 18, 1914.

The shipment consisted of a two-horse spring delivery wagon with a fixed standing top. The body of the wagon, including the top, was shipped with axles and gear attached, uncrated and without protection of any kind. The wheels and lamps were removed, the wheels crated and the lamps boxed. The pole was detached and placed inside of the body of the wagon. The shipment aggregated 1,940 pounds. Charges were collected at the rate of \$11.90 per 100 pounds at three and one-half times the first-class rate, according to the following provision in the western classification, which governs traffic from Chicago to Seattle:

Wagons:

One and two horse freight wagons, n. o. s., with fixed stakes or standing tops (not including undertakers' casket wagons (bodies of which do not extend above base of the driver's seat) or ice wagons):

Not crated ----- 3½ t 1

Complainant contends principally that only the double first-class rate of \$6.80 per 100 pounds should have been applied.

The western classification provided a rating of one and one-half times first class for "spring wagons, n. o. s., k. d., boxed or crated (except shafts and poles)," and that where the same rating was provided for articles shipped in crates or boxes, the same articles shipped in bundles would take the next class higher or greater unless the classification provided otherwise. Complainant assumes that the shipment consisted of bundles and should have been rated one class above the spring wagons above described. The assumption is without merit and the contention was not seriously pressed at the hearing. It is further urged, however, that the shipment was a spring wagon and not a freight wagon, and that as the wheels and lamps were crated and boxed the shipment should have been classed under the item applicable to spring wagons, n. o. s. The shipment as a whole was not crated or boxed, and therefore did not meet the requirements of the item cited. If the shipment should be considered a freight wagon complainant argues that it was entitled to the first-class rate applicable, under the classification, to freight wagons, n. o. s., taken apart, minimum weight 1,500 pounds. This rating was inapplicable because of the specified ratings applicable to wagons with standing tops.

Complainant offered no evidence to show that the rating applied was unreasonable or unjustly discriminatory other than a reference to the classification showing ratings of one and one-half times first class on ice wagons with fixed or standing tops and first class on hearses not boxed or crated, minimum weight 5,000 pounds. Defendant asserts that an ice wagon is rougher and much heavier than the delivery wagon; that a hearse is a much smaller vehicle; that both are less liable to damage; and that if the shipment had been properly crated or boxed the double first-class rate would have been applicable.

We find that the legal rating was applied; that the charges collected were legal; and that the rate applied is not shown to have been unreasonable or unjustly discriminatory. An order will be entered dismissing the complaint.

39 I. C. C.

No. 8239.

HENRY F. KATH COMPANY, INCORPORATED,
v.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted December 30, 1915. Decided May 19, 1916.

Rate charged for the transportation of mussel shells in carloads from Muscatine, Iowa, to New York, N. Y., found unreasonable and reparation awarded.

Frank Lyon for complainant.

Ernest S. Ballard for Michigan Central Railroad Company and New York Central Railroad Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company and its receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling shells, pearls, slugs, etc., at Muscatine, Iowa. By complaint, filed August 9, 1915, it alleges that the rate charged by defendants for the transportation of eight carloads of mussel shells shipped from Muscatine to New York, N. Y., between August 29, 1913, and September 26, 1913, was unreasonable. Reparation is asked.

The case was submitted on an agreed statement of facts substantially as follows: The shipments were delivered to the Chicago, Rock Island & Pacific Railway, hereinafter referred to as the Rock Island, at Muscatine, consigned to complainant at New York, and were moved by the Rock Island to Chicago, Ill., and by the Michigan Central Railroad and the New York Central & Hudson River Railroad beyond. They were reshipped at New York to Havre, France, and Hamburg, Germany. Rail transportation charges were collected in the sum of \$1,111.65 at a rate of 32½ cents per 100 pounds on an aggregate of 342,016 pounds. There was an overcharge of 10 cents. These charges were paid by the steamship companies and collected by them from the consignees at destination, who, in turn, deduct them from complainant's invoices. For a number of years prior to February 15, 1913, the Rock Island had maintained a ra

26½ cents on mussel shells in carloads from Muscatine to New York, but on that date, as the result of a clerical error in the reissue of a tariff, the 26½-cent rate was canceled, leaving the sixth-class rate of 32½ cents applicable. The Rock Island did not intend to cancel the 26½-cent rate and restored it, effective January 9, 1914, as soon as the error was discovered. The rate was reduced to 24½ cents on April 15, 1914, and is now 24.6 cents. Complainant does not attack the rate now in effect and asks for reparation only on the basis of the 26½-cent rate. It is stated that from September, 1912, to January, 1915, the rate on mussel shells from Mississippi River crossings to New York was 23½ cents per 100 pounds, and it appears that when the shipments moved, and for at least a year previously, the Chicago, Milwaukee & St. Paul Railway and its connections maintained a 26½-cent rate from Muscatine to New York.

Defendants admit that the rate attacked was unreasonable, and are willing to make the reparation asked.

We find that the rate attacked was unreasonable to the extent that it exceeded 26½ cents per 100 pounds, which we find was reasonable; that complainant made the shipments as described and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$205.31, including the 10-cent overcharge outstanding. The record does not establish the date upon which the freight charges were paid by complainant and therefore the award of reparation will be without interest.

An appropriate order will be entered. No order for the future is necessary.

39 L. C. C.

No. 8295.

CHATTANOOGA SEWER PIPE & FIRE BRICK COMPANY

v.

CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 2029.

Submitted December 10, 1915. Decided May 24, 1916.

Rate of 16.8 cents per 100 pounds charged by defendants for the transportation of hollow fireproof building tile in carloads from Chattanooga, Tenn., to Valdosta, Ga., not found unreasonable, unjustly discriminatory, or in violation of the rules of the fourth section. Complaint dismissed.

B. R. Shepherd for complainant.

Edward H. Hart for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of hollow fireproof building tile and other clay products at Chattanooga, Tenn. By complaint, filed September 7, 1915, it alleges that the through commodity rate of 16.8 cents per 100 pounds charged by defendants for the transportation of hollow fireproof building tile from Chattanooga to Valdosta, Ga., was unreasonable and discriminatory to the extent that it exceeded 15.29 cents and that it violated the provisions of the fourth section. Reparation is asked. That portion of Fourth Section Application No. 2029 of the Georgia Southern & Florida Railroad Company in which authority is asked to continue a higher rate for the transportation of hollow building tile from Chattanooga to Valdosta than the aggregate of the intermediate rates was set for hearing with the complaint.

The shipments aggregated 140,450 pounds and moved during the period from December 9 to 15, 1913, inclusive. Charges were collected in the sum of \$236.38 at a joint rate of 16.8 cents per 100 pounds.

Complainant cites an alleged combination rate of 15.29 cents, minimum 40,000 pounds, based on Rossville, Ga., within the switching limits of Chattanooga, composed of a switching charge of \$5 per car, or 1.25 cents per 100 pounds, at the minimum carload weight

of 40,000 pounds for building tile and an intrastate rate of 14.04 cents per 100 pounds from Rossville through Macon to Valdosta, which was the way the cars involved moved, which rate was 10 per cent less than the sum of the 8.8-cent rate applicable from Rossville to Macon and the 6.8-cent rate from Macon to Valdosta. But this 10 per cent reduction in the aggregate of the rates to and from Macon did not, and does not, apply for interstate traffic, and the rates applicable to and from Rossville aggregated 16.85 cents, or 0.5 mill more than the through rate.

Complainant also cites rates on the traffic involved lower than the rate assailed to points in territory adjacent to Valdosta. It is not necessary to repeat the explanations given for the maintenance of the lower rates to the ports and to some interior points than to Valdosta, as they have appeared in other reports. It suffices to say that the situation was protected by appropriate fourth section applications and has recently been corrected. *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, and 32 I. C. C., 61.

The rates formerly in effect on fire brick, pressed brick, paving brick, paving tile, and sewer pipe from Chattanooga to Valdosta are cited. Building tile is more fragile than brick and does not load as heavily. In *Chattanooga Sewer Pipe & Fire Brick Co. v. N., C. & St. L. Ry.*, Docket No. 5323, unreported, we found that the building tile shipments therein involved averaged about 40,000 pounds to the carload as compared with an average weight of about 67,000 pounds per carload for brick. Three full carloads here involved averaged less than 42,000 pounds.

The rate attacked was subsequently reduced to 15.29 cents and later to 11 cents, which is the present rate, and complainant emphasizes these reductions. But both reduced rates were published by the defendants at the urgent request of complainant, and we have held repeatedly that the voluntary reduction of a rate is not determinative of its former unreasonableness.

We find that the rate attacked is not shown to have been either unreasonable or discriminatory, or in violation of the rules of the fourth section, and the complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 754.
COAL TO CLEBURNE, TEX., AND OTHER POINTS.

Submitted February 21, 1916. Decided May 24, 1916.

Proposed increased rates on coal in carloads from Raton, and other points in New Mexico, to stations on the Trinity & Brazos Valley Railway from Cleburne, Tex., to Limestone, Tex., inclusive, have not been justified.

Earl Cobb for protestant.

F. E. Heafer for Atchison, Topeka & Santa Fe Railway Company.

C. E. Gustavus for J. W. Robbins, receiver, Trinity & Brazos Valley Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Respondents proposed to increase the rates on coal in carloads from Raton and other points in New Mexico to stations on the Trinity & Brazos Valley Railway from Cleburne, Tex., to Limestone, Tex., inclusive. Tariff schedules were filed to take effect December 10, 1915, but upon protest by the Southeastern Coal Company of Amarillo, Tex., were suspended until April 8, 1916, and later until October 8, 1916. Shipments of coal by protestant from Raton to Cleburne, Hillsboro, Bynum, Malone, Cooledge, and Limestone on the Cleburne branch of the Trinity & Brazos Valley Railway are moved by the Atchison, Topeka & Santa Fe Railway to Colfax, N. Mex., by the El Paso & Southwestern to Tucumcari, N. Mex., and by the Rock Island lines through Amarillo and El Reno, Okla., to Fort Worth. The suspended schedule would cancel out the present joint commodity rates and render applicable the rates in effect to and from Fort Worth, which would be from 10 cents to 75 cents per net ton higher than the present joint rates.

The main line of the Trinity & Brazos Valley extends south from Waxahachie, Tex., to Houston, Tex. The Cleburne branch extends northwest from Teague to Cleburne and nearly parallels the main line on the west. The Trinity & Brazos Valley connects with the Gulf, Colorado & Santa Fe at Cleburne and formerly operated under trackage rights over the lines of that company between Fort Worth and Cleburne. The trackage agreement was canceled August 1, 1914, and since that date the traffic has moved to points on the Cle-

burne branch by way of Waxahachie and Teague, the movement from Fort Worth to Waxahachie being over the rails of the Houston & Texas Central Railroad under a trackage agreement with that company. The following table shows the present rates and the proposed rates per ton by the route last described:

From Raton to—	Present rates.	Proposed rates.	Increase.
Cleburne.....	\$3.10	\$3.20	\$0.10
Hillsboro.....	3.20	3.75	.55
Bynum.....	3.20	3.80	.60
Malone.....	3.10	3.85	.75
Cooledge.....	3.40	3.95	.55
Limestone.....	3.40	4.05	.65

Coal destined to points on the Cleburne branch must move through Teague, which takes a rate of \$3.80, while the present rates to points on the main line of the Trinity & Brazos Valley from Waxahachie to Teague are graded up from \$3.10 to \$3.80.

Respondents state that the present adjustment involves departures from the provisions of the fourth section which are protected by appropriate fourth section applications. The respondents considered it necessary in order to adjust this situation to cancel the lower joint rates applicable to points north of Teague on the Cleburne branch, as the carriers could not afford to reduce the rates to intermediate points to the level of the rate to Cleburne. But this assumes that the rates to the intermediate points were and are reasonable and ignores the fact that new departures from the provisions of the fourth section would be created at points on the Cleburne branch.

Proposed increased rates are not reasonable merely because they rectify fourth section departures, *Rates on Lumber*, 32 I. C. C., 494, and we find that respondents have not justified the rates proposed.

39 I. C. C.

No. 7136.
LAFAYETTE CHAMBER OF COMMERCE
v.
ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted July 20, 1915. Decided May 19, 1916.

Present combination rate for the transportation of cement in carloads from Leeds, Ala., to Lafayette, La., found unreasonable and unjustly discriminatory. Establishment of joint rate via New Orleans, La., required.

B. F. Martin for complainant.

Denegre, Leovy & Chaffe and *F. H. Wood* for Morgan's Louisiana & Texas Railroad & Steamship Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a voluntary association of business men organized to promote the agricultural and commercial interests of Lafayette, La. By complaint, filed July 28, 1914, it alleges that the rate charged by defendants for the transportation of cement in carloads from Leeds, Ala., to Lafayette is unreasonable and unjustly discriminatory. The establishment of a through route and joint rate not exceeding 19 cents is asked. All rates in this report are stated in cents per 100 pounds.

Cement shipped from Leeds to Lafayette moves over the lines of the Southern Railway, New Orleans & Northeastern Railroad, and Morgan's Louisiana & Texas Railroad & Steamship Company. Lafayette is 512 miles from Leeds by this route. New Orleans is 366 miles from Leeds; Lafayette, 146 miles from New Orleans. No joint rate applied when the complaint was filed, and the lowest rate applicable was a combination rate of 39.15 cents, composed of a commodity rate of 3.15 cents to Birmingham and the class C rate of 36 cents beyond. Of this combination complainant was apparently unaware. There was also in effect a combination rate of 44 cents, minimum weight 40,000 pounds, composed of a commodity rate of 9 cents to New Orleans and the class C rate of 35 cents beyond. Complainant attacks only the 35-cent component of the 44-cent rate, contending that a rate of 10 cents would be reasonable for the 146-mile haul from New Orleans to Lafayette.

The component from New Orleans to Lafayette has been subject to numerous changes in recent years, but the rate now in effect, 16.3

cents, minimum weight 40,000 pounds, restores a situation which existed prior to March, 1914. The present Birmingham combination is 59.5 cents.

The carriers' earnings under the 44-cent rate involved and under the present and desired rates per 100 pounds compare as follows:

	Old rate.	Earnings per ton- mile.	Present rate.	Earnings per ton- mile.	Pro- posed rate.	Earnings per ton- mile.
	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Through from Leeds to Lafayette.....	44.0	17.2	25.3	9.9	19.0	7.4

The rate from Leeds to Lafayette is also compared with rates on cement from Clifford, Ga., Kingsport, Tenn., Ada, Okla., Iola, Kans., and St. Louis, Mo., to Lafayette and other points in the same general vicinity and from Leeds to such other points which average 21.3 cents. Intrastate rates in Louisiana are cited which average 10.32 cents for an average distance of 211 miles, yielding an average ton-mile revenue of 9.8 mills. Several rates established by the Railroad Commission of Louisiana also are cited which average 13.5 cents for an average distance of 224 miles, yielding an average revenue of 12.1 mills per ton-mile. Other rates cited are rates on cement for 145 miles prescribed by the state commissions of Oklahoma, Missouri, Illinois, Iowa, Arkansas, Mississippi, Georgia, and Florida, which average 8.87 cents; and rates prescribed by this Commission ranging from 11.5 cents to 19.5 cents for distances ranging from 170 to 473 miles, which yield from 5.8 mills to 14.7 mills per ton-mile.

Complainant shows that during the year 1914, 29 carloads of cement, averaging 69,379 pounds per car, moved from Leeds to Lafayette, and states that the movement will continue because of various unfinished improvements and public works at Lafayette. Defendants cite *Oklahoma Portland Cement Co. v. A., L. & G. Ry. Co.*, 32 I. C. C., 221, where we held that Ada, Okla., should be given a differential of 2 cents below Kansas gas belt points to destinations in Louisiana. In complying with our order in that case the carriers elected to increase the rates from Kansas gas belt points 2 cents, leaving in effect the present rate from Ada to Lafayette of 32 cents. The increased rates were protested, but unavailingly. We held that the rate of 32 cents from Ada was discriminatory but did not declare it reasonable, and in addition defendants fail to establish the necessary similarity of transportation conditions. In *Oklahoma Portland Cement Co. v. M., K. & T. Ry. Co.*, 24 I. C. C., 158, we prescribed a maximum rate of 15 cents on cement from Ada to Shreveport, a distance of 321 miles, which rate yields 9.3 mills per ton-mile.

Although the complainant assails primarily the component of the rate from New Orleans to Lafayette, complainant's real interest is to secure a reasonable and nondiscriminatory through rate from Leeds, and as previously stated the establishment of a joint rate is asked. Under combination rates a through route via New Orleans already exists. The existing through rate via this route of 25.3 cents we find to be unreasonable and unjustly discriminatory and defendants, Southern Railway Company, New Orleans & Northeastern Railroad Company, and Morgan's Louisiana & Texas Railroad & Steamship Company, will be required to establish via this route a joint rate not in excess of 21 cents per 100 pounds, which we find to be a reasonable maximum and nondiscriminatory rate for the future.

The record does not disclose to what weight cement generally loads in this territory, but it is observed that the average weight per car of shipments moved from Leeds to Lafayette in 1914 was 69,379 pounds. We think, therefore, that defendants may with propriety establish a carload minimum weight of 60,000 pounds to apply in connection with the reduced rate prescribed. An appropriate order will be entered.

39 I. C. C.

No. 7536.¹
H. J. HEINZ COMPANY
v.
PERE MARQUETTE RAILROAD COMPANY ET AL

Submitted April 23, 1915. Decided May 19, 1916.

Rates charged by defendants for the transportation of kraut brine in mixed carloads with kraut or with kraut and pickles from Saginaw, Mich., to various points in California, Washington, Colorado, Texas, and Oklahoma found unreasonable to the extent that they exceeded the rates contemporaneously in effect on kraut, or kraut and pickles, mixed, in carloads. Reparation awarded.

F. A. Higerd for complainant.

John T. Bowe for defendants in No. 7536.

D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of food products, with its principal office at Pittsburgh, Pa., and a factory at Saginaw, Mich. By complaints, filed November 27, 1914, it alleges that the rates charged by defendants for the transportation of kraut brine shipped in mixed carloads with kraut, or kraut and pickles, from Saginaw to various points in the states of California, Washington, Colorado, Texas, and Oklahoma, in 1912, 1913, and 1914, were unreasonable to the extent that they exceeded the rates applicable on kraut, or kraut and pickles mixed. Reparation is asked. The first shipment on which reparation is asked moved November 13, 1912, but the complaints were filed within two years after the causes of action accrued.

Complainant customarily ships a certain amount of brine, usually about five barrels, with every carload of kraut, or kraut and pickles, that it ships. The brine is that in which the kraut has been cured and is intended to supply loss caused by leakage, fermentation, or damage to packages, or for use in repacking into smaller packages when necessary. The shipments were consigned to agencies or branches of complainant. The complaint in Docket No. 7536 involves 16 shipments to San Diego, Sacramento, San Francisco, and Los Angeles, Cal., and to Seattle, Wash.; that in Sub-No. 1, four shipments,

¹ The proceeding also embraces complaints in Nos. 7536 (Sub-Nos. 1, and 2). Same v. Same.

to Dallas and Houston, Tex., and Oklahoma City, Okla.; that in Sub-No. 2, one shipment to Denver, Colo. Commodity rates were assessed on the kraut and pickles contained in all of the shipments except that the fifth-class rate governed by official classification was applied from Saginaw to the Mississippi River on the entire shipment to Denver. It is stated that a commodity rate of 62 cents per 100 pounds was applied on the kraut beyond the river. The tariffs now on file do not show any commodity rate in effect on kraut from Mississippi River crossings to Denver either at that time or since. The 62-cent rate there applied was the fifth-class rate under western classification. The rate charged on the kraut brine, except on the shipments to Denver, was the second-class rate applicable under western classification to liquors and liquids, n. o. s. The application of these rates resulted in much higher relative charges on the brine than on the kraut, or kraut and pickles.

All the defendants in No. 7536 were represented at the hearing. The Atchison, Topeka & Santa Fe Railway and the Gulf, Colorado & Santa Fe Railway were the only defendants represented in Sub-No. 1; the Union Pacific Railroad the only defendant in Sub-No. 2. The opinion was expressed on behalf of the defendants represented that it was never the intention of the carriers to charge a higher rate on the brine when shipped in mixed carloads with kraut, or kraut and pickles, than applied on kraut, or kraut and pickles, and willingness to make reparation on that basis was expressed. It was stated that the several tariffs applicable were in process of amendment, making the same rates applicable to the brine as to the kraut, or kraut and pickles. The tariffs now on file disclose that the tariffs in controversy have been amended with respect to the points involved, except from the Mississippi River crossings to Denver. The western classification, however, has been so amended as to include kraut brine among the several items taking the same rating as kraut or kraut and pickles. Kraut brine is worth not more than \$3 per barrel, including the value of the barrel. Kraut is worth from \$12 to \$15 per barrel.

We find that the rate assailed on kraut brine in mixed carloads with kraut, or with kraut and pickles, was and for the future will be unreasonable to the extent that it exceeded and may exceed the rate contemporaneously applicable on kraut, or kraut and pickles mixed in carloads; that complainant made the shipments as described and paid and bore charges thereon at the rates herein found unreasonable; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rates herein found reasonable, and that it is entitled to reparation, with interest.

Complainant asked at the hearing that reparation might also be granted on certain other shipments not included in the complaints, but set forth in a statement received by us April 7, 1915, and since the hearing defendants have asked that reparation may be granted on two shipments from Saginaw to Seattle, not included in the complaints, but which moved over the lines of carriers named as defendants. All of these shipments moved within two years prior to the presentation of claims therefor to the Commission.

The shipments enumerated by complainant in its statement originated at Saginaw and moved to points of destination included in those already named and also to Kansas City, Mo., Omaha, Nebr., and Portland; Oreg. Defendants do not object to granting reparation on such additional shipments as moved over their lines. It does not appear that any carriers other than those named in the complaints participated in the movement of such shipments. The shipments to the Pacific coast points named, moreover, all moved at joint rates to which defendants were and are parties, so that defendants are liable for any reparation that may be due even if proper parties defendant are not joined.

Certain shipments are said possibly to have been overcharged on the kraut or kraut and pickles.

The exact amount of reparation due can not be determined from the present record. Complainant accordingly should prepare a statement showing as to each shipment on which reparation is claimed the date of shipment, points of origin and destination, route, weight, car number and initials, rates applied, charges collected and date of payment, and the amount of reparation due under our findings herein, including any overcharge that may have accrued, which statement should be submitted to the proper defendants in each case for verification. Upon receipt of a statement so prepared by complainant and verified by the proper defendants, we will consider the entry of an order awarding reparation.

Appropriate orders will be entered.

39 I. C. C.

No. 7881.
BIBB BRICK COMPANY
v.
CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

Submitted September 27, 1915. Decided May 19, 1916.

Charges on a carload shipment of iron articles from Macon, Ga., to Dayton, Ohio, were assessed on the basis of the rate applicable to brick trucks, knocked down. Complainant's contention that the shipments consisted of scrap iron, on which a lower rate applied, found not to be sustained. Complaint dismissed.

O. J. Massee, jr., for complainant.

Frank W. Gwathmey for Central of Georgia Railway Company; Nashville, Chattanooga & St. Louis Railway; and Cincinnati, New Orleans & Texas Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of brick, with its principal office at Macon, Ga. By complaint, filed April 3, 1915, it alleges that the charges collected by defendants for the transportation of a carload of "scrap iron," weighing 80,200 pounds, from Macon to Dayton, Ohio, in November, 1913, were unreasonable.

The articles constituting the shipment were side bars, rollers, castings, frames, nuts, bolts, and other parts of secondhand brick trucks. The shipment was originally billed scrap iron. It moved: Central of Georgia Railway to Atlanta, Ga.; Western & Atlantic Railroad to Chattanooga, Tenn.; Cincinnati, New Orleans & Texas Pacific Railway to Cincinnati, Ohio; Cincinnati, Hamilton & Dayton Railway to destination. Charges were collected at a combination rate of 53.5 cents per 100 pounds, 46 cents to Cincinnati and 7.5 cents beyond, applicable to brick trucks in carloads. The rate on scrap iron in carloads from Macon to Dayton over the route of movement was a combination rate based on Cincinnati: \$3.50 per net ton from Macon to Cincinnati, \$1 per gross ton beyond. Complainant contends that the material shipped was scrap iron and that the rate applied was, therefore, unreasonable. The sole question for determination is whether the shipment consisted of scrap iron or brick trucks knocked down.

Complainant purchased 600 new trucks from a manufacturer of brick trucks in Dayton at \$30 per truck and sold 450 secondhand brick trucks to the same manufacturer at a price of about \$5 per truck, delivered at Dayton. A witness for complainant stated that all of these secondhand trucks which could be further used were subsequently sold by the purchaser to various brick manufacturers in Georgia and the Carolinas and shipped directly from Macon to the purchasers; that the articles constituting the shipment consisted of parts of the remaining secondhand trucks which could not be further used; that none of the parts were in condition to be used for the purpose for which they were originally intended; that they had ceased to be parts of brick trucks and had become scrap iron and were of no value except for remelting. A representative of the Southern Weighing and Inspection Bureau, who inspected the shipment at Macon, stated that it consisted of brick trucks knocked down; that most of the frames included in the shipment were intact, had never been used, and were thoroughly serviceable; that the nuts and bolts were in a barrel and that the frames were carefully loaded and substantially braced in the car with 4 by 4 and 1 by 12 braces. The testimony of an accountant of the Central of Georgia Railway, who inspected the shipment at Macon, and of another representative of the Southern Weighing and Inspection Bureau, who inspected the shipment at Atlanta, is substantially to the same effect.

Scrap iron is almost invariably loaded without regard to breakage or damage in transit. When secondhand iron articles are carefully loaded and braced in a car, it may be assumed, in the absence of a showing to the contrary, that they are so loaded to prevent breakage in transit. The record does not disclose what disposition was made by the purchaser of the articles constituting the shipment.

The evidence is incomplete, but upon all the facts of record we find that the shipment is not shown to have consisted of scrap iron and that the rate assailed is not shown to have been unreasonable or unlawfully applied.

An order dismissing the complaint will be entered.

39 I. C. C.

No. 7994.

McKEE & BLIVEN BUTTON COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 2045.

Submitted November 16, 1915. Decided May 19, 1916.

1. Rate charged for the transportation of mussel shells in carloads from Merom, Ind., to Columbus Junction, Iowa, found to have been unreasonable to the extent that it exceeded the aggregate of intermediate rates to and from Palestine, Ill. Reparation awarded.
2. Application for relief from rule applying to the aggregate of intermediate rates of the fourth section denied.

F. W. Knoche for complainants.

A. P. Humburg, E. A. Smith, and Fred C. Furry for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are J. S. McKee and W. E. Bliven, copartners, engaged in manufacturing pearl buttons at Muscatine, Iowa. By complaint, filed May 10, 1915, they allege that the rate charged by defendants for the transportation of two carloads of mussel shells from Merom, Ind., to Columbus Junction, Iowa, was unreasonable and in violation of the rule of the fourth section as to the aggregate of intermediate rates. Reparation is asked and the establishment of a reasonable rate for the future. That portion of Illinois Central Railroad Company Fourth Section Application No. 2045 in which authority is asked for the continuance of a higher charge for the transportation of mussel shells from Merom to Columbus Junction as a through route than the aggregate of the intermediate rates to and from Palestine, Ill., was heard with the complaint.

The shipments weighed 37,600 pounds and 38,000 pounds, respectively, and moved October 8, 1913: Illinois Central Railroad to Peoria, Ill.; Chicago, Rock Island & Pacific Railway thence to Columbus Junction. Charges were collected in the sum of \$119 at a joint commodity rate of 15 cents per 100 pounds, minimum 40,000 pounds. A minimum of 50,000 pounds was applicable, and the shipments were undercharged \$31.

Palestine is 5 miles west of Merom. Traffic from Merom to Palestine was governed by official classification which rates mussel shells in carloads sixth class, minimum weight 36,000 pounds. Traffic from Palestine to Columbus Junction was governed by Illinois classification, which rated and still rates mussel shells in carloads tenth class, minimum weight 30,000 pounds. The sixth-class rate applicable to Palestine was 4.5 cents per 100 pounds; the tenth-class rate beyond, 10.1 cents. The through commodity rate charged and the class rate to Palestine were increased 5 per cent October 26, 1914; the class rate from Palestine, November 16, 1914. The present through commodity rate is 15.8 cents, minimum 50,000 pounds, while the intermediate class rates are 4.7 cents, minimum 40,000 pounds, and 10.6 cents, minimum 30,000 pounds.

Defendants urge that the commodity rate from Merom is a group rate that also applies from Evansville, Griffin, New Harmony, and Riverton, Ind., and that its group application should be considered in connection with the application of the rules of the fourth section. Columbus Junction is only 332 miles from Merom, but an average distance of 358 miles from the group points named. The average of the lowest combination rates at present applicable on mussel shells from points in the group to Columbus Junction is 16.9 cents, 1.1 cents more than the present joint commodity rate of 15.8 cents. We can not accept this, however, as a justification for a joint rate from Merom to Columbus Junction that is higher than the aggregate of the intermediate rates to and from Palestine, and the fourth section relief asked will be denied.

A commodity rate of 15 cents applied on mussel shells in carloads from Merom to Clinton, Iowa, 302 miles, and to Keokuk, Iowa, 309 miles; also from Evansville, Griffin, and New Harmony to points in Iowa for distances ranging from 312 miles to 339 miles. Effective October 26, 1914, these rates also were increased to 15.8 cents.

We find that the rate assailed was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously applicable to and from Palestine; that complainants made the shipments as described and paid and bore charges thereon at the rate herein found unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that they are entitled to reparation in the sum of \$8.62, with interest from April 18, 1914.

Appropriate orders will be entered. The undercharge found outstanding may be waived.

No. 8017.
NATIONAL PICKLE & CANNING COMPANY
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY.

Submitted November 27, 1915. Decided May 19, 1916.

Rate of 10 cents per 100 pounds, minimum 30,000 pounds, charged for the transportation of pickles, catsup, and kraut in straight or mixed carloads from Keokuk, Iowa, to St. Louis, Mo., justified. Complaint dismissed.

O. M. Rogers for complainant.

Kenneth F. Burgess for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of food products, with its principal office at Blue Island, Ill., and a branch office at St. Louis, Mo. By complaint, filed May 15, 1915, it alleges that the rate of 10 cents per 100 pounds charged by defendant since April 26, 1915, for the transportation of pickles, catsup, and kraut in carloads from Keokuk, Iowa, to St. Louis, is unreasonable and unjustly discriminatory. Reparation is asked on shipments moved on or after April 26, 1915.

Prior to November 16, 1914, a commodity rate of 7 cents per 100 pounds, minimum 30,000 pounds, applied on these commodities from Keokuk to St. Louis, which was increased on that date to 7.4 cents. The present rate of 10 cents, minimum 30,000 pounds, was established April 26, 1915, and the burden was upon defendant to justify it.

Keokuk is 179 miles from St. Louis, and the rate attacked is compared with the following commodity rates to St. Louis: 9 cents from Durham, Mo., 148 miles; 9 cents from Ewing, Mo., 151 miles; 10 cents from Alexandria, Mo., 166 miles; 10 cents from Montrose, Iowa, 183 miles; 10.5 cents from Fort Madison, Iowa, 195 miles; 10.5 cents from Burlington, Iowa, 209 miles; 14.8 cents from Ottumwa, Iowa, 247 miles; 16.1 cents from Oskaloosa, Iowa, 273 miles. Many other similar rates for like distances also are exhibited. The rates from Durham, Ewing, and Alexandria are intrastate rates. Defendant also cites *National Pickle & Canning Co. v. C., R. I. & P. Ry. Co.*, Docket No. 7377, unreported, in which a rate of 14 cents, minimum 36,000 pounds, was prescribed to St. Louis from Bonaparte, Iowa, 207 miles;

Keosauqua, Iowa, 221 miles; Mount Sterling, Iowa, 216 miles; and Cantril, Iowa, 224 miles. The 10-cent rate in issue yields 11.17 mills per ton-mile, or 16.7 cents per car-mile, which earnings are not out of line with carrier's earnings under the rates prescribed in the *National Pickle & Canning Case, supra*.

Defendant explains that the former 7-cent rate was established to meet water competition on the Mississippi River which still exists, but which defendant feels does not justify the maintenance of a rate from Keokuk to St. Louis maladjusted to the rates from other points. The commodities involved are rated fifth class, minimum 24,000 pounds, in straight or mixed carloads in Illinois classification. The fifth-class rate from Keokuk to St. Louis is 13.7 cents per 100 pounds.

Complainant asserts that the rate assailed unduly prejudices Keokuk to the advantage of Hannibal, Mo, and Quincy, Ill., as Hannibal has a rate of 9 cents per 100 pounds to St. Louis, 117 miles; Quincy the same rate for a distance of 137 miles. But the shorter distances from both points to St. Louis than from Keokuk warrant some differences in rates and we are not convinced that the situation disclosed prejudices Keokuk or complainant unduly.

We find that defendant has justified the rate assailed, and the complaint will be dismissed.

39 I. C. C.

No. 8089.
CRUNDEN-MARTIN MANUFACTURING COMPANY
v.
MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted November 24, 1915. Decided May 19, 1916.

Rate of \$1.41 per 100 pounds legally applicable to the transportation of certain mixed carload shipments of wrapping paper and paper bags from St. Louis, Mo., to Gallup, N. Mex., not shown to have been unreasonable. Shipments found to have been overcharged. Reparation awarded.

C. H. Rodehaver for complainant.

Robert Dunlap, T. J. Norton, and F. E. Andrews for Atchison, Topeka & Santa Fe Railway Company.

F. E. Andrews for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of wrapping paper and paper bags, with its principal place of business at St. Louis, Mo. By complaint, filed June 17, 1915, it alleges that the rate charged by defendants for the transportation of two mixed carloads of wrapping paper and paper bags from St. Louis to Gallup, N. Mex., in January and September, 1914, was unjust and unreasonable to the extent that it exceeded a rate of \$1.07 per 100 pounds. Reparation is asked.

The shipments aggregated 77,316 pounds and moved: Missouri Pacific Railway to Kansas City, Mo.; Atchison, Topeka & Santa Fe Railway beyond. Charges were collected in the sum of \$1,105.62 at the through fifth-class rate of \$1.43 per 100 pounds. Defendants' tariff naming the through class rates from St. Louis to Gallup contained the following rule:

If the aggregate of the intermediate rates, * * * makes less than the through rates named in this tariff or as amended, the combination rates so made will apply.

The aggregate of intermediate rates applicable was \$1.41 per 100 pounds: 96 cents per 100 pounds from St. Louis to Albuquerque, N. Mex.; 45 cents beyond. Defendants admit that the shipments were overcharged to the extent of 2 cents per 100 pounds, or \$15.46 altogether.

Gallup is a local station on the Atchison, Topeka & Santa Fe Railway coast lines, 1,332 miles west of St. Louis and 146 miles west of Isleta, N. Mex., the junction of the Santa Fe's lines to the Pacific coast and El Paso, Tex., respectively. Complainant contends that

the rate charged was unreasonable in comparison with the rate from St. Louis to El Paso, 1,426 miles, and because it exceeded the rate of \$1.07 subsequently established from St. Louis to Gallup.

A rate of 76 cents per 100 pounds applied on mixed carloads of wrapping paper and paper bags from St. Louis to El Paso, which was lower than the rate in effect to Isleta and other intermediate points in New Mexico. But rates to El Paso were shown in *Corporation Commission of New Mexico v. Ry. Co.*, 34 I. C. C., 292, to have been influenced by the competition of water-and-rail routes from the east and of more direct lines from St. Louis. Such rates therefore are not criteria of reasonable rates to Gallup, where similar competition is not encountered. Our order in the case cited required the carriers to observe the long-and-short-haul rule of the fourth section at intermediate stations in New Mexico, either by increasing the rates to El Paso, decreasing the rates to the intermediate points, or by simultaneous increases and reductions.

The \$1.07 rate from St. Louis to Gallup was established November 15, 1914, after the shipments had moved. A commodity rate of \$1 per 100 pounds was established on the same date from St. Louis to lower Pacific coast terminals. Gallup is intermediate to the Pacific coast, and under our fourth section orders in *Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329, and *City of Spokane v. N. P. Ry. Co.*, 21 I. C. C., 400, the rate from Mississippi River points to the lower Pacific coast terminals may not be exceeded at intermediate points by more than 7 per cent. Effective July 15, 1915, when competition through the Panama Canal had become more marked, the rate on mixed carloads of wrapping paper and paper bags from Missouri River points to the Pacific coast was reduced from \$1 per 100 pounds to 90 cents. The rate from St. Louis to Gallup became \$1.05, 15 cents higher than the rate from Missouri River points, by authority of our amended Fourth Section Order No. 124 entered in *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611.

The reductions described in the rates on wrapping paper and paper bags from St. Louis to Gallup were the result of general readjustments of long standing rates occasioned by our orders in the above-cited cases, in none of which reparation was awarded. The rate now in effect is not alleged to be unreasonable. We find that the charges collected were unlawful to the extent that they exceeded the charges that would have accrued at a rate of \$1.41, which rate is not shown to have been unreasonable, in January and September, 1914, when the shipments moved; that complainant made the shipments as described and paid and bore charges thereon at the rate herein found to have been unlawful; that it has been damaged thereby, and is entitled to reparation in the sum of \$15.46, with interest from October 2, 1914.

An appropriate order will be entered.

No. 8099.
MARSHALLTOWN BUGGY COMPANY
v.
WABASH RAILROAD COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 1948.

Submitted January 21, 1916. Decided May 19, 1916.

1. Complaint attacking defendants' rate on vehicle parts in the white in carloads from Macon, Mo., to Marshalltown, Iowa, dismissed.
2. That portion of Fourth Section Application No. 1948 filed by W. H. Hosmer, agent, in which authority is asked to continue rates on axles from St. Louis, Mo., to Marshalltown, Iowa, lower than rates contemporaneously maintained from Macon and other intermediate points, denied.

F. W. Knoche for complainant.

F. S. Hollands for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of vehicles at Marshalltown, Iowa. By complaint, filed June 19, 1915, it alleges that the rate charged by defendants for the transportation of a shipment described as vehicle parts in the white, from Macon, Mo., to Marshalltown, December 17, 1912, was unreasonable and in violation of the long-and-short-haul rule of the fourth section. Reparation is asked and the establishment of a reasonable rate for the future. The claim was presented to the Commission informally July 25, 1914. That portion of Fourth Section Application No. 1948, filed by W. H. Hosmer, agent, in which authority is asked to continue rates on axles from St. Louis to Marshalltown which are lower than the rates contemporaneously applicable on like traffic from Macon and other intermediate points was heard with the complaint.

The shipment moved December 17, 1912: Wabash Railroad from Macon to Des Moines, Iowa; Chicago Great Western Railroad thence to Marshalltown. Charges were assessed at the fifth-class rate of 21 cents per 100 pounds on 40,000 pounds of vehicle parts, n. o. s., finished. The rate legally applicable from Macon to Marshalltown on vehicle parts was the class A rate of 26 cents per 100 pounds. Complainant alleges that the shipment was composed of axles, hangers, and springs, and contends that the charges should have been assessed on

the following basis: Hangers, less than carloads, second-class rate of 50 cents per 100 pounds; springs, less than carloads, third-class rate of 40 cents per 100 pounds; axles, carload rate of 13 cents per 100 pounds in effect from St. Louis to Marshalltown at the time of shipment, Macon being directly intermediate. The rate on axles from Macon to Marshalltown was the fifth-class rate of 21 cents per 100 pounds.

The only witness appearing for complainant had no personal knowledge of the composition of the shipment involved. He offered in evidence a bill of lading, an expense bill, and a copy of an invoice purporting to cover the shipment. The bill of lading describes the shipment as vehicle parts in the white, weight, subject to correction, 20,000 pounds. The expense bill describes it as vehicle parts, n. o. s., finished, while the invoice covers a shipment of 43,210 pounds of axles, 1,224 pounds of hangers, and 105 pounds of springs. There were several shipments made at this time by the same parties, consisting of buggy bodies, wheels, axles, and miscellaneous material, and defendants maintain that the actual contents of the shipment can not be determined from the records filed at the hearing. Defendants consented that complainant might furnish this information in affidavits by officers or employees of complainant, to be filed subsequently to the hearing. Complainant has not filed any such affidavits, although repeatedly requested to do so.

The complaint must be dismissed for want of proof.

The commodity rate applicable on axles from St. Louis to Marshalltown is now $14\frac{1}{2}$ cents per 100 pounds. The fifth-class rate, which has been reduced to $18\frac{1}{2}$ cents per 100 pounds, is applicable from Macon on axles. Defendants seek to justify this departure from the long-and-short-haul rule of the fourth section by comparing the distance of 227 miles from Macon to Marshalltown over the route of movement with the distance of 182 miles between the same points over the Wabash and Minneapolis & St. Louis Railway by way of Albia, Iowa. The distances over the routes from St. Louis, the more distant point from which the lower rate applies, would have been more appropriate. Marshalltown is 397.5 miles from St. Louis by way of Des Moines and 352.5 miles by way of Albia. The Wabash is the originating carrier on both routes. Defendants' route between the points involved is not sufficiently circuitous to warrant the relief asked, and the application for relief will be denied.

Appropriate orders will be entered.

No. 8202.

GRANBY MINING AND SMELTING COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 23, 1915. Decided May 19, 1916.

Rate charged by defendants for the transportation of three carloads of zinc ore from Magdalena, N. Mex., to East St. Louis, Ill., found to have been unreasonable to the extent that it exceeded the aggregate of intermediate rates contemporaneously in effect. Reparation awarded.

J. M. Blayney, jr., for complainant.

Thomas R. Farrell for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the mining and smelting business and operates a plant at East St. Louis, Ill. By complaint, filed July 30, 1915, it alleges that the rate of 66 cents per 100 pounds charged by defendants for the transportation of three carloads of zinc ore shipped from Magdalena, N. Mex., to East St. Louis, Ill., between June 3 and August 29, 1913, was unreasonable to the extent that it exceeded a rate of \$5.75 per net ton, the aggregate of the intermediate rates to and from Argentine, Kans. Reparation is asked. The claim was presented to the Commission informally August 6, 1914.

The shipments aggregated 254,760 pounds and moved over defendants' lines through Argentine to destination. Charges were collected in the total sum of \$1,681.41 at a specific joint through class E rate of 66 cents per 100 pounds, minimum 50,000 pounds, under western classification, which was legally applicable. A commodity rate of \$4.50 per net ton, minimum 60,000 pounds, applied from Magdalena to Argentine, valuation not to exceed \$50 per ton; a rate of 6½ cents per 100 pounds, minimum 40,000 pounds, valuation not to exceed \$100 per ton, beyond. The discrepancy between the rate charged and the aggregate of these two rates on shipments valued not in excess of \$50 per ton was protected by an appropriate fourth section application that was not set for hearing with the complaint. But effective December 10, 1913, defendants published a joint com-

modity rate of \$5.75 per net ton, minimum 60,000 pounds, on zinc ore from Magdalena to East St. Louis, value not exceeding \$50 per net ton, thereby removing the fourth section deviation.

East St. Louis is 1,248 miles from Magdalena. The value of the ore shipped was much less than \$50 per net ton. Defendants admit that the rate charged was unreasonable to the extent that it exceeded the aggregate of the intermediate rates to and from Argentine and express willingness to make reparation on that basis.

We find that the rate charged was unreasonable to the extent that it exceeded the aggregate of intermediate rates contemporaneously in effect to and from Argentine; that the shipments were made as described; that complainant paid and bore the charges thereon and has been damaged to the extent of the difference between the total charges collected and the charges that would have accrued at the rate herein found reasonable, and that it is entitled to reparation in the sum of \$948.98, with interest from July 26, 1915. An order will be entered accordingly.

Effective August 23, 1915, the joint rate was increased to \$6 per net ton, minimum 80,000 pounds. The present combination rate is \$5.95, composed of a rate of \$4.50 per net ton to Argentine and a rate of 7½ cents per 100 pounds to East St. Louis. The present joint rate is therefore unlawful to the extent that it exceeds the aggregate of intermediate rates and must be promptly corrected.

89 I. C. C.

No. 8283.
LALANCE & GROSJEAN MANUFACTURING COMPANY
v.
LONG ISLAND RAILROAD COMPANY ET AL.

Submitted November 30, 1915. Decided May 19, 1916.

Collection of charges on a shipment of stamped ware from Woodhaven, N. Y., to Los Angeles, Cal., loaded into two 36-foot cars instead of into one 50-foot car ordered by the shipper, on the basis of the carload rate and minimum for one car and the less-than-carload rate for the other not found unreasonable. Complaint dismissed.

R. E. Clarke for complainant.

C. L. Addison for Long Island Railroad Company.

Fred H. Wood and *Charles Franklin* for Southern Pacific Company.

W. S. Kallman for New York Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the transportation of kitchen utensils and enamel ware, with a factory at Woodhaven, Long Island, N. Y., served by the Long Island Railroad. By complaint, filed September 1, 1915, it alleges that the provisions of note 2 to rule 6-D in transcontinental freight bureau westbound tariff I. C. C. No. 952, as amended by supplement No. 22 thereto, effective February 9, 1914, is unjust and unreasonable. A just and reasonable rule is asked and reparation on a shipment of stamped ware from Woodhaven to Los Angeles, Cal., in June, 1914.

Complainant requested the Long Island Railroad's agent at Ozone Park, N. Y., near Woodhaven, to furnish a 50-foot box car for the shipment. The Long Island Railroad had no 50-foot cars of its own and, being unable to secure one from its connections within six days after the request was received, furnished instead two 36-foot cars, entirely for its own convenience.

Complainant loaded 22,345 pounds of stamped ware into one car and 12,966 pounds into the other. The first car was loaded to its full visible capacity. Charges were collected at Los Angeles in the total sum of \$488.56 at the carload rate of \$1.20 per 100 pounds, minimum 22,000 pounds on the first car, and at the less-than-carload rate of \$1.70 on the second car.

Rule 6-D of the tariff named was a "two for one" rule, but note 2 made the rule inapplicable from the territory east of Chicago, except from New York piers. Complainant contended at the hearing that the inapplicability of the rule from Woodhaven was unreasonable and unduly preferential of competitors at middle western points from which the rule did apply. But the complaint does not allege unjust discrimination.

The 22,000 pounds minimum provided for shipments of stamped ware from the east to California terminals applied to cars of all sizes. The failure of carriers to provide two for one rules is not prima facie unreasonable unless graduated minimum weights are provided for cars of different sizes. *Riverside Mills v. G. R. R.*, 25 I. C. C., 434. No evidence was offered against the application of rule 6-D.

Defendants state that rule 7 of I. C. C. No. 952 is involved and not rule 6-D. Rule 7 provided for the application of the "follow-lot" principle except for "carload freight taking minimum weights of less than 24,000 pounds" and for shipments of various enumerated articles including stamped ware. Complainant did not assail this rule and adduced no evidence with respect to it. Neither does the record suggest that the prescribed minimum weight and the commodity exception were or are unreasonable.

We find that neither the tariff rule assailed nor the charges involved are shown to have been unreasonable, and the complaint will be dismissed.

39 I. C. C.

No. 8288.

ATLANTIC LUMBER COMPANY, INCORPORATED,
v.
ATLANTIC COAST LINE RAILROAD COMPANY ET AL

Submitted November 30, 1915. Decided May 19, 1916.

Joint rate of 34 cents per 100 pounds charged for the transportation of a carload of lumber from Spring Hope, N. C., to Toronto, Ontario, found to have been unreasonable to the extent that it exceeded the aggregate of intermediate rates applicable to and from Norfolk, Va. Reparation awarded.

I. F. Enos for complainant.

J. H. Johnson for Atlantic Coast Line Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale lumber business, with headquarters at Boston, Mass. By complaint, filed September 3, 1915, it alleges that the rate of 34 cents per 100 pounds charged by defendants for the transportation of a carload of rough lumber, shipped October 14, 1911, from Spring Hope, N. C., to Toronto, Ontario, was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of 31½ cents per 100 pounds. Misrouting also is alleged. Reparation is asked. The claim was presented to the Commission informally September 8, 1913. The allegation of unjust discrimination has been abandoned.

The shipment moved: Atlantic Coast Line Railroad to Pinners Point, Va.; New York, Philadelphia & Norfolk Railroad, Philadelphia, Baltimore & Washington Railroad, Pennsylvania Railroad, and Grand Trunk Railway of Canada, thence to destination. Only the initials "G. T." were inserted in the space for routing on the bill of lading. Charges were collected in the sum of \$172.72 on 50,800 pounds of lumber at a joint rate of 34 cents per 100 pounds. Charges for switching in the sum of \$4 and demurrage charges in the sum of \$3 also were collected but are not in issue. The rates applicable over the route of movement to and from Norfolk, Va., aggregated only 33 cents per 100 pounds: 8 cents from Spring Hope to Norfolk, 25 cents beyond. The deviation was protected by an appropriate application which was not set for hearing with the complaint. A joint rate of 33 cents per 100 pounds was established over the route of movement November 6, 1912, subsequently to the date

of shipment, and defendants have expressed their willingness to make reparation on that basis.

A joint rate of 34 cents per 100 pounds applied from and to the points involved: Atlantic Coast Line by way of Norfolk or Petersburg, Va.; Norfolk & Western Railway and connections beyond, with Grand Trunk Railway delivery. The combination on Norfolk or Petersburg, Va., in connection with the lines named made a rate of $31\frac{1}{2}$ cents per 100 pounds: 8 cents per 100 pounds from Spring Hope to Norfolk or Petersburg, $23\frac{1}{2}$ cents beyond.

Complainant does not specifically challenge the reasonableness of the joint rate of 34 cents applicable by way of Norfolk or Petersburg over the route last described, but contends that it was damaged through the failure of the initial carrier to forward the shipment by the route over which the combination rate of $31\frac{1}{2}$ cents per 100 pounds applied. The 34-cent joint rate charged applied over all of the routes cited by which Grand Trunk delivery could be secured. Complainant asks for the establishment of a $31\frac{1}{2}$ -cent rate over the route of movement. The distance by that route is shown to be 871 miles, while the distance over the route through Norfolk and by way of the Norfolk & Western is 1,160 miles. But this is the only substantial evidence adduced to support the request.

We find, following *Paine Lumber Co. v. C., C. & St. L. Ry. Co.*, 24 I. C. C., 626, that the shipment was not misrouted and further find that the rate charged was unreasonable for the route of movement to the extent that it exceeded the aggregate of intermediate rates contemporaneously in effect to and from Norfolk; that complainant made the shipment as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued on the basis of the aggregate of intermediate rates contemporaneously in effect to and from Norfolk; and that it is entitled to reparation in the sum of \$5.08, with interest from November 15, 1911.

An order will be entered accordingly, but as the present joint rate from Spring Hope to Toronto does not exceed the aggregate of intermediate rates over the route of movement, and as the rate found reasonable has been in effect for more than two years, no order will be entered for the future.

No. 8296.
MEMPHIS FREIGHT BUREAU
v.
ILLINOIS CENTRAL RAILROAD COMPANY.

PORTION OF FOURTH SECTION APPLICATION No. 2045.

Submitted November 29, 1915. Decided May 24, 1916.

Rate charged for the transportation of a carload of spokes in the white from New Orleans, La., to Jackson, Tenn., found unreasonable and reparation awarded.

James S. Davant for complainant.

J. L. Sheppard for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This complaint was filed September 1, 1915, by the Memphis Freight Bureau, an organization of shippers and receivers of freight at Memphis, Tenn., on behalf of the Weis & Leah Manufacturing Company, a corporation engaged in the manufacture and sale of spokes, with plants at Memphis and Jackson, Tenn. The allegations are that the rate charged by defendant for the transportation of a carload of spokes in the white shipped from New Orleans, La., to Jackson, in August, 1914, was unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul rule of the fourth section. Reparation is asked.

Complainant billed the shipment from Jackson to Hamburg, Germany, on July 25, 1914, routed by way of New Orleans and the Hamburg-American line. The shipment weighed 36,500 pounds, and a commodity rate of 19 cents per 100 pounds was charged for the transportation from Jackson to New Orleans. The outbreak of the European war made it impossible to export the spokes to Germany, and at complainant's direction they were returned to Jackson. Charges were collected from complainant for the return transportation at the sixth-class rate of 38 cents per 100 pounds, in the sum of \$138.70.

Complainant did not offer any testimony in support of its allegation that the rates charged were unreasonable or unjustly discriminatory, merely suggesting that the 38-cent rate charged did not bear

a proper relationship to the 14-cent rate on hardwood lumber from New Orleans to Jackson. Defendant's witness testified that there had never been a shipment of spokes from New Orleans to Jackson in the past, and that it was not likely that such shipments would be made in the future. There are spoke manufacturers at New Orleans, but they have never asked for a commodity rate to Jackson. Defendant admits, however, that the rate charged was unreasonable to the extent that it exceeded 19 cents and expresses willingness to make reparation. This admission is based upon the fact that a 19-cent commodity rate has been in effect in the opposite direction, under similar transportation conditions, for a number of years.

The sixth-class rate applicable on spokes in the white in carloads from New Orleans to Cairo, Ill., was 29 cents per 100 pounds. Jackson is directly intermediate to Cairo from New Orleans over defendant's line. On January 1, 1916, the sixth-class rate from New Orleans to Jackson was increased to 43 cents, which rate is still in effect. That portion of defendant's Fourth Section Application No. 2045 which relates to this fourth section departure was set for hearing with the complaint. But defendant did not attempt to justify charging a higher rate to Jackson than to Cairo, and the application will be denied to the extent that it is involved.

We find that the rate attacked was and for the future will be unreasonable to the extent that it exceeded or may exceed 19 cents per 100 pounds; that complainant made the shipment as described and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$69.35, with interest from October 12, 1914. Orders will be entered accordingly.

39 I. C. C.

No. 8804.
BOARD OF TRADE OF THE CITY OF CHICAGO
v.
ANN ARBOR RAILROAD COMPANY ET AL.

Submitted February 16, 1916. Decided May 10, 1916.

Certain shipments of grain moved from country stations to Omaha, where transit was accorded. Representative grain was shipped from Omaha to Chicago, where the grain was again accorded transit, and reshipped from Chicago to the Atlantic seaboard for export. Increased reshipping rates from Chicago became effective after the grain moved from the country station, but before it moved from Omaha. Rule 13 of Transit Grain Circular No. 17, I. C. C. No. 328, provides that "the through rate to be applied to transit grain shall be the lawfully published rate through from the original point of shipment to final destination in effect via the transit point at the time of initial shipment from point of origin applicable to the grain covered by inbound billing which these rules permit to be matched against outbound shipments," *Held*:

1. The point of origin referred to in the rule is the country station from which the grain was first moved, and not the transit point from which the grain was reshipped to Chicago.
2. Rule 13 of Milling and Malting Circular No. 13, I. C. C. No. 384, similarly interpreted.

Jeffery & Campbell and J. S. Brown for complainant.

Ernest S. Ballard and T. H. Burgess for defendants.

George A. Shroeder for Chamber of Commerce of Milwaukee, Wis., intervener.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The Board of Trade of the city of Chicago, Ill., by complaint filed January 15, 1916, alleges that the charges collected for the transportation of grain from certain country stations through Omaha and Chicago to the Atlantic seaboard for export were unreasonable and unduly discriminatory in violation of sections 1, 2, and 3 of the act in that they were higher than those lawfully authorized by the tariffs on file with the Commission. It submits for our interpretation certain tariff rules of the defendant carriers involving through rates applicable to transit grain. The Chamber of Commerce of the city of Milwaukee, Wis., intervened on behalf of the defendant carriers, being opposed to the interpretation sought by complainant.

The precise issue here involved is whether the applicable reshipping rate from the last transit point is the rate applicable under tariffs effective on the date of the beginning of the movement from the prior transit point, or the rate applicable on the date of the original movement of the grain in question.

The first of the two rules in issue reads as follows:

RULE 13. The through rate to be applied to transit grain shall be the lawfully published rate through from the original point of shipment to final destination in effect via the transit point at the time of initial shipment from point of origin applicable to the grain covered by inbound billing which these rules permit to be matched against outbound shipments. (See rules 4 and 11.) Transit Grain Circular No. 17, I. C. C. No. 326.

Reshipping rates on grain and grain products from Chicago to points in central freight association territory were increased, effective November 16, 1914, following our original decision in *The Five Per Cent Case*, 31 I. C. C., 351, and from Chicago to points in trunk line and New England freight association territories for domestic consumption and to the ports for export, effective January 20, 1915, following our decision on supplemental hearing in the same case, 32 I. C. C., 325. For the purpose of illustration the parties have taken a supposititious shipment as typical of the many which are affected by this case. A car of wheat moved from Grand Island, Nebr., on December 1, 1914, and was unloaded in an elevator at Omaha. Representative grain was reshipped from Omaha on January 25, 1915, for Chicago, again elevated there, and reshipped from Chicago on February 25, 1915, for New York. Tersely put, the issue is this: For the transportation from Chicago does the reshipping rate apply which was in effect on December 1, 1914, when the grain left Grand Island, the country point, or the increased reshipping rate which was in effect on January 25, 1915, when the grain moved from Omaha?

It will be observed that rule 13 of the transit grain circular, in defining the rate to be applied, makes use of three modifying clauses. Thus it says that—

The through rate to be applied to transit grain shall be the lawfully published rate through—

- (1) From the original point of shipment to final destination;
- (2) In effect via the transit point at the time of initial shipment from point or origin;
- (3) Applicable to the grain covered by the inbound billing which these rules permit to be matched against outbound shipments. (See rules 4 and 11.)

These clauses will be referred to, respectively, as the first, second, and third clauses of the rule.

Complainant points to the first and second clauses, and particularly to the familiar phrases, "original point of shipment," "initial shipment," "point of origin," as referring to the country station from

which the grain, or the grain which it represents, was first moved. Defendants do not deny that in their ordinary acceptance these phrases would plainly mean the starting point of the grain at the country station. They urge, however, that, where transit has been twice accorded, under the limitation of the third clause the point of origin intended is the first transit point.

The defendants' contention is based, first, upon the language of the rule itself, and, second, upon its practical application. With reference to the language of the rule, defendants direct our attention to part of the third clause. Thus it is urged that the through rate to be applied is the rate "applicable to the grain covered by the inbound billing"; that the grain covered by the inbound billing is the grain which moves to Chicago from the last billing point west of Chicago; that the grain which moved into the western billing point is not the same grain as that which moved out under the billing, since its identity has been lost; that even if its identity were preserved it is only from the western billing point to Chicago that the grain is covered by the inbound billing referred to in the rule. It is also urged that the rule has as its purpose the association of inbound and outbound movements at Chicago so as to give them the legal effect of a through movement to which the through rate is applicable, and that the transit service at Chicago is not associated with the transit service at the prior transit point.

In making this contention defendants have relied upon a part of the third clause, which, however, should be considered in its entirety. That clause does not specify merely that the through rate shall be that which is applicable to the grain covered by inbound billing, but—

to the grain covered by the inbound billing which these rules permit to be matched against outbound shipments. (See rules 4 and 11.)

An examination of the rules to which reference is thus made shows quite clearly that the intention of the third clause is to limit the application of the rate to such grain as is entitled under the rules to the transit service accorded. Rule 4 has reference to records kept by transit houses, and provides that such records "must show all grain handled, point of origin and destination," and must show separately the different kinds of grain, in pounds, "(a) received by rail, * * * (e) forwarded by rail, * * * (g) disposed of locally, * * * (j) on hand," etc., and other facts which the rule specifies in detail. Rule 11 provides that—

in the handling of grain through transit houses, it is not practicable to preserve the identity, but it is not permissible to ship out under transit more tonnage than was received under transit, less loss in weight by reason of the treatment, and local or other disposition. (See rule 8.)

The rule then provides for the shipment outbound of mixed grain, separated grain, mixed shipments of unlike transit grain, and mixed shipments of transit and nontransit grain. Rule 8, to which rule 11 makes reference, relates to the cancellation of freight bills representing inbound tonnage, and reads as follows:

To the end that there shall not be in the possession of the transit house uncanceled inbound freight bills, nor inbound tonnage credits, that do not represent grain actually on hand, shippers, transit-house owners or operators must surrender for cancellation to the Joint Rate Inspection Bureau: (a) With the submission of outbound shipping directions sufficient representative freight bills of inbound carriers to cover grain forwarded by rail or boat (transit); (b) daily, sufficient representative freight bills of inbound carriers, or local tonnage credits, to cover grain disposed of locally or forwarded by rail or boat (nontransit); (c) daily, sufficient representative freight bills of inbound carriers, and local tonnage credits, to cover invisible loss.

The rules do not deny the transit service at Chicago to grain which has previously been accorded a similar privilege at one or more transit points in western territory.

It is clear that these provisions, to which the third clause of rule 13 makes specific reference, are intended to show what grain is "covered by the inbound billing which these rules permit to be matched against outbound shipments," and it is to such transit grain that the rate is made applicable by that clause of the rule. In the case of such grain as is accorded the transit service the apparent intention is to restrict the use of the reshipping rate to grain covered by inbound billing which can be properly matched under the rules. If the inbound billing sought to be matched is too old, it comes within the time restriction of the rules which the third clause incorporates by reference, and the reshipping rate can not apply. In this sense the third clause limits the first and second clauses. But if the reshipping rate is applicable to the grain under the billing presented for matching, the rate must be applied which was in effect "at the time of initial shipment from point of origin."

Defendants' interpretation would establish the point of time by reference to the third clause, but this clause does not indicate in itself that it is meant to establish a point of time, nor can it have this effect without limiting a meaning which the first and second clauses would otherwise have. So also defendants' interpretation would establish an intermediate transit point as the point of origin. It must be observed that this intermediate point is not otherwise identified in the rule, nor when so identified is it in any real sense a point of "original" or "initial" shipment. Had defendants' interpretation been intended, it could easily have been expressed in unambiguous terms. The point of time described in the first and second clauses, separately considered, is unmistakable. Defendants' interpretation not only ascribes a meaning to the third clause which

the language of that clause does not seem to import, but so impresses its doubtful meaning upon the first and second clauses as wholly to change their unequivocal meaning.

The second phase of defendants' argument relates to the application of the rule. It is urged that there are practical difficulties in determining the correct rate to apply upon the outbound movement unless the prior transit point is held to be the point of origin within the meaning of the rule. Rule 12 of the transit grain circular provides that when grain is reshipped from transit houses shippers will be required to present to the Joint Rate Inspection Bureau the inbound carrier's representative recorded freight bills and shipping directions in duplicate, bearing shipper's certificate in the following form:

SHIPPER'S CERTIFICATE.

Tender is hereby made to the ——— (outbound carrier) ——— of ——— (inbound carrier) ——— freight bill ——— as listed above for the purpose of securing reshipping privilege and transit rate on commodity covered thereby. This tender is made with a guarantee on ——— part that such privilege may be granted in conformity with rules of said railway, as published in its Transit Circular No. ———, I. C. C. No. ———, issued ———, which have been read and with which ——— familiar.

(Signature of shipper.)

Rule 20 (d) makes it the duty of the Joint Rate Inspection Bureau to insert in the shipping directions and the original and duplicate inbound freight bills, the through rate, division, proportional or reshipping rate, as the case may be, properly applicable.

The freight bills which are registered with the Joint Rate Inspection Bureau uniformly show from what point and when the shipment was billed into Chicago. In the case of grain which has been accorded a prior transit, however, the freight bills frequently do not show the country point from which the movement of the grain started nor the date of this movement. In some instances there is an ex reference which briefly, and sometimes obscurely, shows the country point of origin, weight, and time of shipment. Complainant offered in evidence a freight bill dated February 24, 1915, rendered by the Atchison, Topeka & Santa Fe Railway Company to the Armour Grain Company, as consignee, for the transportation of 84,950 pounds of wheat from Kansas City to Chicago, which bears the legend "pd in UP 11/19 Lee Ks 5 cts TIS 3026 2/20/15 80 M ordered." This was taken to mean that an equivalent tonnage of wheat had been moved by the Union Pacific from Lee, Kans., on November 19 for Kansas City. The year is not stated, but a representative of the consignee testified from his knowledge of consignee's business that the grain was shipped from Lee in 1914. Apparently omission of the year is not unusual, for with reference to the han-

ding at Chicago the bill is indorsed "Bulk wheat unloaded 2/20." The shipping directions furnished by the Armour Grain Company show the freight bill record number of the Joint Rate Inspection Bureau and state the origin of shipment as "K. C. x Lee 11/19/14, 2/20/15." The freight bill was receipted by the Santa Fe on February 25, 1915, and bears an indorsement of the Joint Rate Inspection Bureau as follows: "Reconsigned New York export via Erie R. R. Rate 13.7. Transit privilege cancelled 2/25, 1915. Joint Rate Inspection Bureau." The rate thus applied was the increased rate effective January 20, 1915, but if the point of origin within the meaning of the rule was Lee a rate of 13 cents was applicable.

Defendants offered in evidence a copy of a freight bill of the Chicago & North Western Railway Company, which showed that 62,490 pounds of oats had been shipped from Cedar Rapids, Iowa, on February 3, 1915, for Chicago, and was there unloaded on February 13. The bill is indorsed "free," and shows no rate or charges, except an inspection charge of 50 cents. The freight bill contains no ex references. On shipping directions, however, for the movement from Chicago to Newport News, Va., for export, the consignor stated as the origin of shipment, "CRpds 2/3/15 x Roland 1/19/15" 48,230 pounds, "x Story City 1/19, x Laurel 1/23, x Truesdale 1/21" 14,260 pounds. This shipment was reconsigned to Newport News at the rate of 12.2 cents, which became effective January 20, 1915. The weight of the outbound shipment was 68,000 pounds. According to the ex references, part of the tonnage originated at country points prior to the effective date of the increased rate, and part subsequently thereto. Defendants urge that it would be impossible for the Joint Rate Inspection Bureau to rate the outbound shipment properly unless the point of origin is taken to be Cedar Rapids, the prior transit point.

It is obvious, however, that complete information could have been stated on the inbound freight bills, for these are made from the waybills which are required to show the point of origin of the grain. Rule No. 9 of Chicago & North Western tariff I. C. C. No. 7611, governing transit at Cedar Rapids and other points, reads in part as follows:

A. If the rate to transit station is the same as the transit rate to transit destination, the product or commodity will be waybilled free of freight charges, and shipping directions and waybill must have inserted "free account of transit" * * *. D. Waybills issued at transit station must show: 1. Point of origin, waybill number and date, kind of commodity, and rate charged into transit station, as shown on freight bills surrendered. 2. Through transit rate, point of origin, and transit destination. 3. Balance of through rate and any arbitrary separately.

These rules clearly provide that a new waybill issued at the transit point must show the point of origin. If the waybill from the country point is used for the outbound movement from the transit point it would necessarily show the point of origin. Had such information been shown on the recorded freight bill to which defendants refer there would have been no difficulty in rating the shipment. Defendants' contention that this would have been impossible owing to the fact that part of the tonnage originated prior to the effective date of the increased rate and part thereafter is clearly unsound. Though we find no specific tariff provision covering this situation we consider that that part which originated prior to the increase would take the lower rate, while that which originated after the increase would take the increased rate. A similar situation is provided for in rule 11(d) of the transit grain circular which relates to mixed shipments of transit and nontransit grain. If the quantity of each is known, the transit carload rate applies on the transit portion, and the local carload rate on the nontransit portion. Doubtless in the case of many shipments the information as to prior movements has not been fully shown on the waybills, or on freight bills surrendered for record. If this has been due to failure to issue waybills in accordance with published tariffs or to carelessness in the making of freight bills rendered to shippers, it is clear that the practice of the carriers can properly have no bearing upon the interpretation of the rule here in question.

In this connection it is pertinent to note that rule 15 of the transit grain circular requires that waybills covering outbound shipments from Chicago—

must specify the kind of grain, give full reference to inbilling, including point of origin, date of waybill, and rate or proportion applicable to transit point,
* * *

If such a shipment were stopped for further transit at a point east of Chicago, could it be fairly urged that the point of origin was Chicago although the billing fully disclosed the prior point of shipment, which the tariffs so requiring specifically described as the point of origin?

Further light is thrown upon the issue before us by a consideration of the second rule which this case presents for interpretation:

RULE 13. Where the tariff from point of origin specifies the through rate that shall apply when grain is milled or malted at Chicago district points, such rate will be applied from point of origin of grain to final destination of the product, in effect at the time of initial shipment from point of origin, according to the inbound freight bill surrendered.

Where the initial road's tariff does not specify the through rate that shall apply when grain is milled or malted at Chicago district points, the through rate on the grain and its products shall be the lawfully published rate to

Chicago district points on the grain from the point of origin or rate-basing point upon which the through rate would be based, plus the grain products rate from Chicago district points to final destination, as shown in the tariff of the outbound road in effect at the time the grain originated. Milling and Malting Circular No. 13, I. C. C. 384.

The second paragraph of rule 13 of this circular, as thus set forth, embodies an important change from the corresponding paragraph of rule 13 in Milling and Malting Circular No. 12, I. C. C. No. 358, which was canceled by I. C. C. 384, and which read as follows:

Where the initial road's tariff does not stipulate the rate that shall apply when grain is milled or malted at Chicago district points, the shipment of grain to Chicago district points and of grain products from Chicago district points will be two separate and distinct shipments, and the rate on the grain and its products shall be lawfully published rate to Chicago district points on the grain from the point of origin or rate-basing point upon which the through rate would be based, plus the grain products rate from Chicago district points to final destination, as shown in the tariffs of the individual outbound roads in effect at the time of outbound shipment.

Upon an informal complaint of the Chicago Board of Trade it appeared that the tariffs of certain carriers named a rate on grain products milled in transit at Chicago from grain originating at points from which no through rates were in effect, which was lower than a contemporaneously effective reshipping rate on grain products. Effective January 8, 1914, the carriers proposed to cancel the lower transit rate and to apply the reshipping rate to malt shipped from Chicago on and after that date whether or not the grain from which the malt was manufactured was received and recorded for transit with the Joint Rate Inspection Bureau prior thereto. The Commission expressed the opinion that as to all shipments registered for transit prior to the effective date of the change in the outbound rate and which were forwarded within the prescribed time limit the new outbound rate could not be charged. Application was then made by the carriers under section 6 to amend the second paragraph of rule 13 of the milling and malting circular. Permission was granted and the rule became effective in its present form. The change in the wording is significant of the importance which the Commission by its letter of advice attached to the rate effective at the time the grain movement originated.

In expressing this view the Commission followed the established principles of its decisions and of Conference Ruling 119. Thus it has been held that where a through route has been established the rate properly to be charged is a through rate, and the shipment will move upon the rate existing at the time it is billed by the initial carrier. *In the Matter of Through Routes and Through Rates*, 12 I. C. C. 163. This principle was followed in the case of rates which have changed while the "commodities are in a state of suspended

transportation at the transit point." In *Re Milling-in-Transit Rates*, 17 I. C. C., 113. A transit service is based on the theory that the transportation contract has not been completed, and that the entire shipment from point of origin through the transit point or points to destination is the same in principle as if the shipment had moved through without transit. In Conference Ruling 119 the Commission declined to recognize the propriety of a transit arrangement at Chicago which proposed to apply to the outbound shipment the rate in effect at the time of such shipment if that rate were different from the outbound rate in effect at the time the shipment started from the point of origin. The ruling is as follows:

119. *Reshipping of grain*.—Upon inquiry whether a proposed tariff rule providing that "the rate to be applied on all outbound transit grain of record shall be the specific rate that is lawfully in effect from Chicago at the time the grain is reshipped" may lawfully be incorporated in a tariff: *Held*, That the Commission can not sanction the rule, and that the grain can move only as a through movement on the through rate in effect at the time it starts, or as a local movement.

The reshipping rates from Chicago are, of course, parts of the through rates from point of origin to destination.

The principle here involved is the same. In the case taken as illustrative the grain started from Grand Island. It might have moved through to Chicago without stopping for transit at Omaha. The fact that it stopped at Omaha meant, in principle, but a temporary interruption of its through movement to destination, and unquestionably the rate applicable from Omaha was the rate in effect at the time the shipment left Grand Island. So, also, the grain might have been shipped from Omaha to New York through Chicago without transit at that point, and in this event the rate applicable from Omaha and the rate applicable from Chicago would have been the rate in effect when the shipment started from Grand Island. The second stop for transit at Chicago, as permitted by the tariffs, did not change the principle that the entire transportation was but temporarily interrupted, and therefore the rate applicable from Chicago was the same rate as would have been applied had the shipment moved through Chicago without stop.

It is conceded that the same interpretation must be given to rule 13 of the milling and malting circular as to rule 13 of the transit grain circular. The first paragraph of the rule of the milling and malting circular provides that if the tariff from point of origin specifies the through rate that shall apply when grain is milled or malted at Chicago district points such rate will be applied—

from point of origin of grain to final destination of the product, in effect at the time of initial shipment from point of origin, according to the inbound freight bill surrendered.

Defendants' contention, as in the case of the rule already discussed, is that the words "according to the inbound freight bill surrendered" indicate the prior transit point as the point of origin if the grain has been accorded prior transit. Yet the second paragraph of the rule, which applies when the initial road's tariff does not specify the through rate, makes no reference to the inbound freight bill, but makes applicable the grain products rate from Chicago district points to final destination, as shown in the tariff of the outbound road "in effect at the time the grain originated."

The interpretation asked for by defendants could not be applied to the second paragraph of this rule without incorporating a reference to inbound billing which that paragraph does not contain and without changing the meaning which would be placed in the usual case upon the words "at the time the grain originated."

For the reasons stated defendants' contention that under these rules an intermediate transit point must be taken to be the point of origin is not sustained either by the language of the rules or by the facts shown with reference to their practical application.

This report is confined to an interpretation of the transit rules as they stand. The question of their reasonableness or propriety is not before us.

It follows that the rate properly applicable from Chicago under the rules in question was the rate in effect at the time of shipment from the country point from which the transportation of the grain started. In this view of the matter the carriers will be expected to refund such overcharges as they may have collected.

30 I. C. C.

No. 7515.

AMERICAN ENAMELED BRICK & TILE COMPANY
v.
RARITAN RIVER RAILROAD COMPANY ET AL

Submitted April 26, 1915. Decided May 24, 1916.

1. Rates charged for the transportation of enameled brick in carloads from South River, N. J., to certain points in official classification territory and points west of the Mississippi River not found to have been unreasonable. Defendants authorized to refund certain overcharges.
2. Rates applicable to the transportation of enameled brick in carloads from South River, N. J., to points in official classification territory found to be unjustly discriminatory to the extent that they exceed the rates applied by defendants on glazed terra cotta between the same points.

O. M. Rogers for complainant.

Frederic L. Ballard for Pennsylvania Railroad Company, Raritan River Railroad Company, Baltimore & Ohio Railroad Company, and Central Railroad Company of New Jersey.

H. R. Lewis for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of enameled brick, at South River, N. J. By complaint, filed November 27, 1914, as amended January 12, 1915, it alleges that defendants' rates for the transportation of enameled brick from South River to points in eastern trunk line and central freight association territories, Canada, and points west of the Mississippi River to which the rates are based on Chicago, Ill., or Mississippi River crossings are unreasonable, unjustly discriminatory, and in certain instances in violation of the rule of the fourth section, that through rates shall not exceed the aggregates of the intermediate rates between the same termini. Reparation is asked and the establishment of reasonable rates.

The official classification rates enameled, glazed, and salt-glazed brick in carloads, minimum 30,000 pounds, and terra cotta, for building purposes, minimum weight 36,000 pounds, fifth class; roofing tile in carloads, minimum 36,000 pounds, sixth class. The classification rating is generally applied on enameled brick moving between points

within official classification territory, except to certain water competitive points to which commodity rates are published. Under exceptions to the official classification defendants apply a sixth-class rating on terra cotta from eastern points to points in trunk line and central freight association territories and points in Canada. The designation of the article under the exceptions to the classification is not uniform. To certain destination territory the exception applies on "terra cotta, building, not ornamental, loose;" to other territory on "terra cotta, loose." Defendants also maintain commodity rates on terra cotta to water competitive points and to a large number of points in eastern trunk line territory, but here also, as under the exceptions to the classification, the commodity items are not uniform, applying on terra cotta, building, not ornamental, or terra cotta n. o. s. Salt-glazed brick ordinarily moves under the commodity rates generally applicable on common brick.

Complainant contends that the rates on enameled brick from South River to eastern trunk line and central freight association territories and Canada should not exceed the sixth-class rates, and that the rates to points west of the Mississippi River should not exceed combinations of the sixth-class rates to Chicago or Mississippi River crossings, plus the rates beyond, whichever combinations make lower. The lower rates applied by defendants on terra cotta affords the principal basis for the complaint, although comparisons are also made with the rates on salt-glazed brick and roofing tile.

Enameled brick is used for exterior and also for interior structural purposes where light-reflecting or sanitary material is desired. Complainant's sales average about the same for both purposes. Enameled brick is made in two sizes, the standard pressed brick size and the English size, the latter being somewhat larger than the former. Ninety per cent of complainant's brick is white enameled, and about the same proportion of it moves in carloads that average about 46,000 pounds per car. The average value of complainant's brick is about \$15 per ton at the factory. Terra cotta is manufactured at Perth Amboy, N. J., Rocky Hill, N. J., Tottenville, N. Y., Corning, N. Y., Philadelphia, Pa., and Crum Lynn, Pa. It is not produced in any standard size, but is prepared in accordance with given specifications and averages \$35 per ton in value at the factory.

The processes of glazing enameled brick and terra cotta are identical. While the factory price of terra cotta is greater than enameled brick, the difference in the cost of surfacing a given wall space with either enameled brick or terra cotta is small, and the two articles compete keenly. The testimony shows that under the exceptions to the classification both glazed and unglazed terra cotta have been shipped at the sixth-class rates and that such shipments have cus-

tomarily included ornamented pieces of terra cotta, such as moldings, cornices, etc. Witnesses for complainant testified that the term "ornamental terra cotta" is a trade name and includes all the terra cotta used in the construction of a building except that commonly known as hollow tile or fireproof terra cotta; that the term applies to the rectangular forms of terra cotta known as the ashler design, as well as to pieces which are modeled with some particular design, such as a floral design; that ornamental terra cotta is also referred to as architectural terra cotta, which means a piece architecturally embellished; and that the latter term is proper rather than ornamental terra cotta. It is said that some ornamented pieces are used in all terra-cotta construction work and that when used together the ashler design and the ornamented pieces invariably take the same price.

Salt-glazed brick is valued at about \$5 per ton at the factory; glazed roofing tile at from about \$21 to \$24 per ton. Complainant admits that there is no competition between enameled brick and roofing tile and none between salt-glazed brick and enameled brick, except in the case of complainant's "seconds," or defective bricks.

The sixth-class rates on terra cotta were first established in 1908 to the western termini of eastern trunk line territory and certain points farther west. In 1911 this basis was extended to central freight association territory generally, and in 1912 to points in Canada. Defendants' witnesses testified that the precise nature of the commodity was not understood at the time of the establishment of the sixth-class basis and that the inclusion of glazed terra cotta and ornamented terra cotta under the sixth-class rating was not contemplated. Defendants disclaim any intention of charging shippers with misdescription in including glazed and ornamented terra cotta in shipments under the sixth-class rating, but state that the description used in the exceptions to the classification was unfortunate and has enabled shippers to include under the sixth-class rating a large amount of terra cotta which should take a higher rating.

Enameled brick is rated class B in western classification and sixth class in southern classification. From certain eastern and central freight association points to southwestern and southeastern points commodity rates are published or concurred in by some of defendants which are lower than the classification basis. The record is insufficient to justify a finding that the rates complained of are intrinsically unreasonable but furnishes no justification from a transportation standpoint for higher rates on enameled brick than on glazed terra cotta for building purposes. We accordingly find that the present rates on enameled brick from South River to points in official classification territory subject to the act are unjustly discriminatory to the extent that they exceed the rates contempora-

neously applied by defendants on glazed terra cotta for building purposes between the same points. No evidence was offered by complainant to show that it has been damaged in any specific sum by reason of the lower rates applied on terra cotta, and reparation is therefore denied.

One of complainant's competitors operates an enameled-brick plant at Mount Savage, Md. Complainant urges that the rates on enameled brick from Mount Savage to points in central freight association territory are on a basis of 1 cent per 100 pounds less than fifth class and that this adjustment subjects it to unjust discrimination. Mount Savage is on the Cumberland & Pennsylvania Railroad, which connects with the Baltimore & Ohio and the Pennsylvania railroads at Cumberland, Md., 9.4 miles from Mount Savage. Prior to July 15, 1912, there were no joint through class rates in effect from Mount Savage either by way of the Baltimore & Ohio Railroad or the Pennsylvania Railroad. Commodity rates had long applied on enameled brick from Mount Savage both eastbound and westbound, equivalent to the fifth-class rates from Johnstown, Pa., subject to a minimum carload rate of 14 cents per 100 pounds. On November 1, 1912, through class rates were established from Mount Savage in connection with the Baltimore & Ohio Railroad and connecting lines to points in official classification territory generally on the same basis as applied from Cumberland. No change was made, however, in the commodity rates on enameled brick from Mount Savage, except that the minimum carload rate has since been increased to 14.7 cents per 100 pounds, following *The Five Per Cent Case*, 32 I. C. C., 325. No through class rates have ever been published from Mount Savage by the Pennsylvania Railroad. The fifth-class rates from Johnstown to central freight association territory are, generally speaking, 1 cent per 100 pounds less than the rates from Cumberland, and it is this situation which gives rise to complainant's contention that the rates on enameled brick from Mount Savage are 1 cent per 100 pounds less than the fifth-class rates contemporaneously applicable on other fifth-class traffic from Mount Savage. The rates from Cumberland to eastern territory are generally the same as from Johnstown, except to short-haul points and points in western New York, to which the rates from Johnstown are, in some instances, lower.

We find that the rates on enameled brick from South River are not shown to be unjustly discriminatory in comparison with the rates from Mount Savage.

The rate in effect when the complaint was filed on enameled brick from South River to Takoma, D. C., was 18 cents per 100 pounds; the rate to Washington, D. C., \$2.60 per ton. Since that time the

rates to Takoma and Washington have been increased to 18.9 cents per 100 pounds and \$2.74 per ton, respectively, following *The Five Per Cent Case*, *supra*. Takoma is close to Washington and ordinarily takes the same class rates as Washington. Complainant contends that the rate on enameled brick from South River to Takoma should not exceed that contemporaneously in effect to Washington. Defendants assert that the rate from South River to Washington is made with relation to water competitive rates to Baltimore, Md., Norfolk, Richmond, and Alexandria, Va. Complainant offered no other evidence and we find that the rate from South River to Takoma is not shown to be either unreasonable or unjustly discriminatory.

On August 1, 1914, complainant shipped a carload of enameled brick which weighed 51,000 pounds from South River to Helena, Mont. No joint rate applied and charges were collected in the sum of \$461.55 at a rate of 90.5 cents per 100 pounds, that was apparently composed of a rate of 30 cents from South River to Chicago and a rate of 60.5 cents thence to destination. A combination rate of 90 cents per 100 pounds existed, composed of a rate of 30 cents from South River to Chicago, a rate of 14 cents from Chicago to Minnesota Transfer, and a rate of 46 cents thence to destination. Complainant apparently was overcharged to the extent of one-half cent per 100 pounds. The record is insufficient to justify an award of reparation, but if complainant did pay a rate in excess of the lower combination rate described the carriers participating in the movement of the shipment should promptly refund the overcharges with interest, without an order.

A rate of 17.5 cents per 100 pounds applied, when the complaint was filed, from South River to Lynn, Mass. A rate of \$2 per net ton applied from South River to Boston, and the fifth-class rate applicable on the traffic from Boston to Lynn was 80 cents per net ton, making the combination rate of \$2.80 per ton. Complainant contends that the rate to Lynn violated the aggregate of intermediate rates rule of the fourth section of the act and was unreasonable to the extent that it exceeded the rate to Boston plus the sixth-class rate of 60 cents per net ton from Boston to Lynn. The present rate to Lynn is 18.4 cents per 100 pounds, the rate to Boston \$2.10 per net ton. The intermediate rates now applicable to and from Boston aggregate \$2.90 per net ton, or 14.5 cents per 100 pounds. The tariff naming the rate to Lynn did not and does not now limit the routing to any specific junction, and the through rate therefore was and is applicable through Boston, thus contravening the fourth section of the act. As a rate to Lynn in excess of the aggregate of intermediate rates to and from Boston was not and is not covered by a fourth section application as required by the act, it was and is unlawful.

Defendants show that complainant's shipment to Lynn did not move through Boston. The charges collected did not exceed those which would have accrued at the aggregate of intermediate rates over the route of movement. We find that the rate charged over the route of movement is not shown to have been unreasonable.

An order will be entered in accordance with the findings herein announced.



No. 6923.

VIRGINIA-CAROLINA CHEMICAL COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted September 14, 1915. Decided May 9, 1916.

Former finding that defendants' joint rate of 60 cents per 100 pounds on imported nitrate of soda from Pensacola, Fla., to Shreveport, La., was unreasonable to the extent that it exceeded the sum of the intermediate rates contemporaneously in effect to and from New Orleans, La., affirmed on rehearing. Reparation awarded.

H. W. B. Glover for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

We found in our previous report herein, unreported, that the rate of 60 cents per 100 pounds charged by defendants for the transportation of four carloads of imported nitrate of soda, aggregating 209,280 pounds, from Pensacola, Fla., through New Orleans, La., to Shreveport, La., was unreasonable to the extent that it exceeded 20 cents per 100 pounds, the aggregate of the intermediate rates contemporaneously in effect to and from New Orleans. Reparation was awarded in the sum of \$837.11, with interest from March 18, 1914, on the basis of the aggregate of these intermediate rates. Complainant filed a petition for rehearing, and on July 22, 1915, we rescinded our order and reopened the case. Rehearing has been had, and the case is now before us on the whole record.

During the period within which the shipments moved the Louisville & Nashville Railroad and its connections maintained a commodity rate

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of \$1.20 per ton on nitrate of soda from Pensacola to Jackson and Meridian, Miss., while the Alabama & Vicksburg Railway and the Vicksburg, Shreveport & Pacific Railway maintained a commodity rate of \$2 per ton from Jackson and Meridian to Shreveport. On December 22, 1914, a joint rate of \$3.20 per ton was established over the route of movement, which rate is still in effect. Complainant contends that the 60-cent rate, equivalent to \$12 per ton, was unreasonable to the extent that it exceeded \$3.20 per ton, the aggregate of the intermediate rates in effect by way of Jackson and Meridian.

Shreveport is 549.5 miles from Pensacola through New Orleans; 551 miles through Meridian; 506 miles through Jackson. The route through New Orleans is two line; through Meridian, four line; through Jackson, five line. No other evidence was offered tending to show that \$3.20 per ton would have been a reasonable rate over the route of movement at the time the shipments moved.

Defendants were not represented at either hearing. A witness for complainant at the first hearing referred to a letter from the Louisville & Nashville Railroad in which it was stated that defendants were willing to make reparation on the basis of the \$3.20 rate.

We find nothing to warrant a change in our original findings, except that interest should have been awarded from June 13, 1914, and not from March 18, 1914.

An order will be entered accordingly

89 I. C. C.

No. 7958.
VIRGINIA-CAROLINA CHEMICAL COMPANY
v.
SEABOARD AIR LINE RAILWAY.

Submitted November 8, 1915. Decided May 19, 1916.

Complaint alleging that charges were illegally assessed on certain carloads of imported kainit, shipped from Fernandina, Fla., to points within the same state on the basis of the rates applicable to interstate or foreign shipments of kainit instead of on the basis of the Florida state rates, which were lower, dismissed for lack of proof.

H. W. B. Glover and Charles G. Wilson for complainant.
R. Walton Moore and Frank W. Gwathmey for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of fertilizers, with its principal office at Richmond, Va. By complaint, filed April 29, 1915, it alleges that the charges collected by defendant on certain carloads of imported kainit shipped from the port of Fernandina, in the state of Florida, to points within the same state were illegal in that the rates applicable from Fernandina on interstate or foreign shipments of kainit in carloads were applied instead of the Florida intrastate rates, which were lower. The claim was first filed with the Commission April 19, 1915, apparently more than two years after the cause of action accrued.

The kainit was imported from Germany through the port of Fernandina, was stored in defendant's warehouse at that point, and subsequently was shipped over its line to interior Florida destinations. But the shipments are nowhere described in detail. We are not informed as to the dates of movement from Fernandina, the destinations, the consignees, the exact length of time the kainit remained in store at Fernandina, whether there was a change of ownership at Fernandina or at final destinations, and like matters. It is well settled that the character of traffic, whether state or interstate, must be determined largely by the facts of each case. *C., M. & St. P. Ry. v. Iowa*, 233 U. S., 234. The necessary facts relative to the shipments are not disclosed.

This conclusion renders it unnecessary to determine whether the claim for reparation is barred by the statute of limitation. *Corporation Commission of Oklahoma v. A., T. & S. F. Ry. Co.*, 25 I. C. C., 120.

The complaint will be dismissed.

No. 7686.¹
FOREST LUMBER COMPANY
v.
MORGANTOWN & KINGWOOD RAILROAD COMPANY
ET AL.

Submitted November 3, 1915. Decided May 19, 1916.

Rate charged by defendants for the transportation of certain carloads of lumber from Rock Forge and various other points in West Virginia to McKeesport and numerous other points in Pennsylvania not shown to have been unreasonable. Complaints dismissed.

W. J. Herman for complainants.
Gordon & Smith and *Alexander Black* for Morgantown & Kingwood Railroad Company and Baltimore & Ohio Railroad Company.
William C. Coleman for Baltimore & Ohio Railroad Company.
William Ainsworth Parker for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

These two cases are analogous and will be disposed of in one report.

Complainants are corporations engaged in the lumber business, with offices at Pittsburgh, Pa. By complaints, filed January 21, 1915, and April 19, 1915, respectively, they allege that the rate of 14 cents per 100 pounds charged by defendants for the transportation of numerous carloads of lumber from Rock Forge and various other points in West Virginia, located on the Morgantown & Kingwood Railroad, to points in Pennsylvania, located on the Pennsylvania Railroad, was unreasonable to the extent that it exceeded 10 cents per 100 pounds. Reparation is asked.

No. 7686 involves 31 shipments that originated at Rock Forge between July 21, 1913, and October 27, 1914, and were carried by the Morgantown & Kingwood Railroad in connection with the Baltimore & Ohio Railroad and the Pennsylvania Railroad, the delivering carrier, to the following points in Pennsylvania: McKeesport, Monongahela, West Elizabeth, Glassmere, Wilkinsburg, Pittsburgh, Huff, Marianna, Allegheny, Vandergrift, and New Kensington. No. 7930 involves 12 shipments that originated at various points in West Virginia on the Morgantown & Kingwood Railroad between September

¹ The proceeding also embraces complaint in No. 7930, *Jos. W. Cottrell Lumber Company v. Same.*

22, 1913, and October 27, 1914, and moved by the same route to the following Pennsylvania points on the Pennsylvania Railroad: Penn, New Kensington, Leechburg, Tarentum, Creighton, and Verona. Charges were collected on all of the shipments at a rate of 14 cents per 100 pounds, the joint sixth-class rate prescribed by the official classification. Effective March 23, 1914, defendants voluntarily established a joint commodity rate of \$2 per net ton, equivalent to 10 cents per 100 pounds, applicable on lumber in carloads from Rock Forge and other points of origin involved to the points of destination except Vandergrift, Glassmere, New Kensington, Leechburg, Tarentum, Creighton, and Verona. Effective February 23, 1915, defendants increased this rate to \$2.10 per net ton, equivalent to 10.5 cents per 100 pounds, and at the same time published a joint commodity rate of \$2.52 per net ton, equivalent to 12.6 cents per 100 pounds, on lumber in carloads from Rock Forge and other points of origin involved to Vandergrift, Glassmere, New Kensington, Leechburg, Tarentum, Creighton, and Verona, which rates are still in effect. The shipments all moved during the period the 14-cent rate was in effect. Complainants express satisfaction with the 10.5-cent rate but assert that the 12.6-cent rate described should be reduced to 10.5 cents.

The points taking the 10.5-cent rate, which is the Pittsburgh rate, are located south of Pittsburgh on what is known as the Monongahela division of the Pennsylvania Railroad and are not as far from the points of origin as the other destinations named. The points taking the 12.6-cent rate are located north of Pittsburgh on what is known as the Conemaugh division of the Pennsylvania Railroad. Defendants state that this group adjustment of rates on lumber to Pennsylvania Railroad points merely followed the group adjustment already in effect, which dates back to 1900.

Complainants' showing that they requested defendants before the shipments moved to reduce the rate then in effect on lumber from the points of origin involved and that the rate was reduced after the shipments moved constitute their whole case against the rate charged. Defendants deny that the rate charged was unreasonable and state that the purpose of the reductions subsequently effected was properly to align the rates on lumber from certain points of origin to various points of destination local to the Pennsylvania Railroad by putting these rates on the same basis as the rates in effect to competitive points of destination served by other lines and to eliminate any possible discriminations that may have existed. They state that the territory of origin is mountainous; that operation there by the Morgantown & Kingwood and the Baltimore & Ohio is expensive and that these complaints are the first made against the joint class

rates under which lumber has generally moved since 1900 from the originating territory involved.

We have repeatedly held that the voluntary reduction of a rate by carriers is not enough to base an award of reparation on shipments moved prior to the reduction and find here that the rate charged is not shown to have been unreasonable. The 12.6-cent rate attacked also is not shown to be unreasonable. An order dismissing the complaints will be entered.

No. 7283.

CAMBRIDGE TILE MANUFACTURING COMPANY

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 703.

Submitted November 17, 1915. Decided May 19, 1916.

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1. Rate of \$5.26 per net ton for the transportation of bulk clay in carloads from Edgar and Okahumpka, Fla., to Covington, Ky., not shown to have been unreasonable. Complaint dismissed.
 2. Fourth Section Application No. 703 denied to the extent that authority is asked in it to continue rates on clay from Edgar and Okahumpka, Fla., to Miamisburg, West Carrollton, Middletown, Hamilton, and Lockland, Ohio, lower than the rates contemporaneously applicable on like traffic to Covington, Ky., and other intermediate points.

Geo. A. Hamma for complainant.

C. D. Drayton and *H. H. Preston* for Atlantic Coast Line Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of various kinds of floor tile, at Covington, Ky. By complaint, filed September 12, 1914, it alleges that defendants' rate of \$5.26 per net ton for the transportation of 14 carloads of bulk clay shipped on various dates during the period from August 19, 1912, to July 28, 1914, from Edgar and Okahumpka, Fla., to Covington was unreasonable and unjustly discriminatory. Violation of the long-and-short-haul rule of the fourth section of the act also is alleged. Reparation is asked.

Covington is directly opposite Cincinnati, Ohio, on the Ohio River. A rate of \$4.95 per net ton applied over defendants' lines from the points of origin to Miamisburg and West Carrollton; a rate of \$4.90 to Middletown; a rate of \$4.85 to Hamilton; and a rate of \$4.76 to Lockland, Ohio. Those portions of Fourth Section Application No. 708, filed by the Atlantic Coast Line Railroad, in which authority is asked to continue rates on clay from Edgar and Okahumpka, Fla., to Miamisburg, West Carrollton, Middletown, Hamilton, and Lockland, Ohio, lower than the rate contemporaneously applicable on like traffic to Covington, Ky., and other intermediate points, were heard with the complaint. These fourth section departures constitute complainant's only evidence in support of its allegations.

Defendants' representative testified that the departures from the long-and-short-haul rule were the result of a clerical error and that while the rate to Covington was inherently reasonable it was not in his opinion the intention of the defendants to maintain higher rates to that point than were maintained to the more distant points named. He also stated that rates to Cincinnati and other Ohio River points were depressed on account of the rates applicable in connection with rail-and-water rates to Baltimore plus the low rates of the trunk lines.

We find that the rate attacked is not shown to have been unreasonable, and the complaint will be dismissed. The fourth section application will be denied to the extent that it is involved.

39 I. C. C.

No. 7548.
SWIFT & COMPANY
v.
UNION PACIFIC RAILROAD COMPANY ET AL.

Submitted November 16, 1915. Decided May 10, 1916.

Rate of 27½ cents per 100 pounds for the transportation of bulk salt in carloads from Kansas producing points to Fort Worth and North Fort Worth, Tex., found to be unreasonable. Maximum rates prescribed for the future.

Albert H. & Henry Veeder, R. C. McManus, and R. D. Rynder for complainant.

A. R. Urion, C. J. Faulkner, jr., and H. K. Crafts for Armour & Company, intervener.

Wallace T. Hughes, T. J. Norton, D. L. Meyers, W. F. Dickinson, J. L. Coleman, and F. E. Andrews for defendants.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The complainant, Swift & Company, operates at North Fort Worth, Tex., one of its large packing plants. It complains that defendants' carload rate of 26 cents per 100 pounds, increased to 27½ cents on January 1, 1915, for the transportation to that point of salt in bulk from producing points in Kansas is unreasonable, and unjustly discriminatory in favor of Oklahoma City. The relief sought is establishment of a reasonable and nondiscriminatory rate and determination of a proper relationship in the rates to Fort Worth and Oklahoma City, respectively.

Another packer, Armour & Company, operating at Fort Worth, Tex., intervened in support of the complaint and seeks like relief in rates to that city. The destinations are substantially identical and will be referred to as Fort Worth. Complainant and intervener will be termed complainants.

Complainants use in their Fort Worth plants large quantities of salt, both rock and evaporated or fine. Both move in bulk, rock salt always, but fine salt sometimes in packages, and only box cars are used for the movement. Salt loads heavily, usually to the capacity of the car. Loss and damage claims are slight. The evidence in this proceeding as to the desirableness of the traffic and its general

nature confirms our findings in that regard in *Railroad Commissioners of Kansas v. A., T. & S. F. Ry. Co.*, 22 I. C. C., 407, 410. Rock salt is mined, and is shipped in the condition in which it comes from the mine. Fine or evaporated salt is the product of manufacturing processes. Kansas and Louisiana afford natural sources of supply for Fort Worth. In Kansas, rock salt is shipped mainly from Lyons and Kanopolis, evaporated salt from Hutchinson, Anthony, Ellsworth, and Sterling. Rock salt from Louisiana mines is shipped from Avery, Salt Mine, and Weeks. Evaporated salt is produced in Texas, but not rock salt. It is asserted that the high rate on rock salt from Kansas debars complainants from that source and restricts them to the Louisiana mines, although the Kansas mines are slightly nearer to Fort Worth. Of the six principal shipping points in Kansas, Anthony, the nearest, is 344 miles from Fort Worth; Ellsworth, the most distant, is 470 miles; and the average distance is said to be 431 miles. The rate from these mines is 27½ cents and is blanketed as far south as Galveston. Under the general adjustment class rates from Kansas points are usually lower to Dallas and Fort Worth than to other Texas points, and it is admitted that a lower rate on salt to Fort Worth than to Texas points farther south would not be illogical.

In *Western Rock Salt Co. v. A., T. & S. F. Ry. Co.*, Docket No. 5670, unreported, we had occasion to consider the rate on rock salt, then 26 cents, from Lyons to Fort Worth, Dallas, and Waco, Tex., as compared with the rate of 16 cents then in effect to those points from the Louisiana mines. The gist of the complaint, as developed at the hearing, was discrimination against the Lyons mines in favor of the Louisiana mines. But as the carriers there made defendant did not serve the Louisiana mines and had no control over rates therefrom, and as the record disclosed no definite or substantial evidence that the 26-cent rate from Kansas was unreasonable, the complaint was dismissed. Our report expressed no opinion upon the reasonableness of that rate.

In that case it was testified, in effect, on behalf of the carriers there defendant, that a substantially lower rate from Kansas mines to Texas points would be warranted, but that every attempt to reduce the 26-cent rate had led to reductions by the Railroad Commission of Texas of intrastate rates on salt, seemingly in retaliation. This testimony seems to be confirmed by documentary evidence in the record now before us.

Within the past 12 or 14 years, the rates on salt from Kansas mines to Fort Worth and other Texas points has been reduced several times, but only for brief periods, and the prior rate of 26 cents was soon restored.

The selling price of rock salt f. o. b. mines in Kansas at the time of the hearing approximated \$1.25 per ton, slightly less than that of slack coal f. o. b. coal mines in Kansas. The present salt rate of 27½ cents is equivalent to \$5.50 per net ton, or more than 400 per cent of its selling price at point of origin. Because of this high rate no shipments of salt from Kansas mines to Forth Worth were made during the year 1914, and the heavy demands there were supplied from other sources.

Complainants compare this rate with the rate from Kansas mines to Oklahoma City, formerly 15 cents, reduced to 12 cents under our order in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, and restored by the carriers to 15 cents after expiration of that order. On new complaint we again directed the establishment and maintenance of the 12-cent rate in *Morris & Co. v. U. P. R. R. Co.*, 36 I. C. C., 540. In the latter case it was shown that the average distance from the Kansas field to Oklahoma City is about 256 miles. Complainants compete with packers at Oklahoma City, who also use large quantities of rock salt. The nature and extent of this competition has been considered by us in former proceedings. *Investigation of Alleged Unreasonable Rates on Meats, supra*; *Crowdus Bros. v. A., T. & S. F. Ry. Co.*, 29 I. C. C. 449; 32 I. C. C., 355. Defendants' rates on package salt from Kansas points were 3½ cents higher to Fort Worth than to Oklahoma City until January 1, 1915. Since then the spread has been 3.7 cents. Based on a like spread over the 12-cent rate on bulk salt to Oklahoma City, complainants suggest as reasonable a carload rate of 15½ cents on bulk salt to Fort Worth.

Complainants also compare the existing rate to Fort Worth with rates to St. Paul and the Missouri River cities, as follows:

From Kansas mines to—	Distance.	Rate per 100 pounds.	Revenue per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Kansas City, Mo.....	239	10.0	8.3
St. Joseph, Mo.....	260	10.0	7.7
Omaha, Nebr.....	377	12.0	6.3
Sioux City, Iowa.....	478	16.0	6.7
St. Paul, Minn.....	702	20.0	5.7
Fort Worth, Tex.....	431	27.5	12.9

Complainants have also compiled from the annual reports of the defendants to the Commission for the fiscal year ended June 30, 1914, average ton-mile and car-mile earnings from all traffic for that year as compared with the earnings on salt from Kansas mines which would result from use of the present 27½-cent rate, in the table at the top of the following page.

Roads.	Average distance hauled per ton.	Average revenue per ton-mile.	Average number of tons per loaded car-mile.	Average revenue per loaded car-mile.
	<i>Miles.</i>	<i>Mills.</i>		<i>Cents.</i>
U. P.	371.36	9.42	16.40	15.45
St. L. & S. F.	161.79	9.84	17.83	17.54
C., R. I. & P.	263.96	8.87	15.94	13.66
C., R. I. & G.	87.33	10.73	17.05	18.29
A., T. & S. F.	273.60	10.87	15.75	16.33
G., C. & S. F.	230.42	9.19	15.50	14.34
M., K. & T. lines	202.83	10.98	14.94	16.33
T. & P.	186.91	9.69	15.71	15.22
M., O. & G.	129.76	7.49	22.01	18.45
M. P.	196.10	8.16	17.54	14.31
Average.....	205.41	9.439	16.96	15.78
Average on bulk salt from Kansas mines to Fort Worth, Tex., based on a 27½-cent rate.....	431	12.9	40	31

Based on the rate of 15½ cents suggested by complainants the average revenue would be 7.27 mills per ton-mile and 29 cents per car-mile on an average loading of 40 tons.

Complainants further compare ton-mile earnings on salt with those on various other commodities, as shown in the following table:

Commodity.	From—	To—	Distance.	Rate per 100 pounds.	Earnings per ton-mile.
			<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Common brick.....	Kansas City, Mo.	Fort Worth, Tex.	507	15	5.9
Acid phosphate fertilizer.....	do.	do.	507	15	5.9
Ground limestone.....	Fort Scott, Kans.	do.	419	15	7.2
Common brick.....	Mound Valley, Kans.	Paris, Tex.	399	11	6.0
Do.	Wichita, Kans.	Glenrio, Tex.	417	14	6.7
Cement plaster.....	Medicine Lodge, Kans.	Acme, Tex.	304	13	8.6
Chatts.....	Joplin, Mo.	Denison, Tex.	287	7½	5.3
Spelter.....	do.	Wichita Falls, Tex.	416	15	7.2
Building stone.....	Carthage, Mo.	Bowie, Tex.	403	15½	7.7
Packing-house products.....	Dallas, Tex.	St. Joseph, Mo.	571	21	7.4
Salt.....	Kansas mines.....	Fort Worth, Tex.	431	15½	7.27
Do.	do.	do.	431	27½	12.9

Complainants also compare earnings on salt from Kansas mines with earnings on slack coal from Oklahoma and Arkansas mines, as follows:

To Fort Worth from—	Distance.	Weight.	Rate per ton.	Freight, per car.	Per ton-mile.	Per car-mile.
	<i>Miles.</i>	<i>Pounds.</i>			<i>Mills.</i>	<i>Cents.</i>
Salt, per car:						
Hutchinson, Kans.	415	85,000	\$5.50	\$233.75	13.3	56.3
Kanopolis, Kans.	470	85,000	5.50	233.75	11.7	49.7
Lyons, Kans.	443	85,000	5.50	233.75	12.4	52.8
Slack coal:						
McAlester, Okla.	191	70,000	1.35	47.25	7.1	24.7
Henryetta, Okla.	250	70,000	1.35	47.25	5.4	18.9
Dewar, Okla.	252	70,000	1.35	47.25	5.4	18.8
Adamson, Okla.	206	70,000	1.35	47.25	6.6	22.9
Wilburton, Okla.	219	70,000	1.35	47.25	6.2	21.6
Huntington, Ark.	303	80,000	1.35	54.00	4.5	17.8
Hartford, Ark.	278	80,000	1.35	54.00	4.9	19.4
Jenny Lind, Ark.	311	80,000	1.35	54.00	4.3	17.4
Hackett, Ark.	286	80,000	1.35	54.00	4.7	18.9
Greenwood, Ark.	298	80,000	1.35	54.00	4.5	18.1

Average car loading, salt, 85,000 pounds. Rate 27½ cents, \$5.50 per ton.
 Average car loading, Oklahoma coal, 70,000 pounds. Rate, slack coal, \$1.35 per ton.
 Average car loading, Arkansas coal, 80,000 pounds. Rate, slack coal, \$1.35 per ton.

No attempt was made by defendants to justify the increased rate of 27½ cents, and substantially no evidence was introduced which would tend to support the reasonableness of the preceding rate of 26 cents.

Here, as in the *Western Rock Salt Co. Case, supra*, the view was expressed on behalf of defendants that the rate to points in Texas from Lyons or other points in Kansas should be about the same as from equidistant points in Louisiana. As already stated, the salt rate from Kansas is blanketed as far south as Galveston. Defendants put in evidence a statement showing the distance from Hutchinson, Kans., to the principal point in each county of Texas to which the 27½-cent rate applies. These destinations represent practically all of the Texas common-point territory. The statement shows an average distance to these selected points of 661.9 miles. The average distance from Lyons and Kanopolis, principal rock salt mines, to Fort Worth is 456½ miles. The distance to Fort Worth from Hutchinson, the largest producing point for fine salt, is 415 miles.

Upon consideration of all the facts and circumstances of record we are of opinion and find that defendants have failed to justify the increased rate of 27½ cents on salt, in bulk in carloads, from Kansas mines to Fort Worth, and that the present rate is and for the future will be unreasonable to the extent that it exceeds a rate of 17 cents per 100 pounds, which we find to be reasonable.

Complainants ask us to determine the proper relationship between carload rates to Oklahoma City and to Fort Worth on bulk salt from the Kansas mines. They have introduced no evidence thereon, except comparisons with rates on package salt to those destinations, and seem to have rested upon the suggestion above mentioned that the rate to Fort Worth be made a differential of 3½ cents, or perhaps 4 cents, over the rate to Oklahoma City. They cite our action in *Investigation of Alleged Unreasonable Rates on Meats, supra*. In that proceeding the differential was fixed as part of a general readjustment of rates on fresh meats and packing-house products from Wichita, Oklahoma City, and Fort Worth to eastern territories of destination, and our action there furnishes no precedent for the establishment of differentials here.

The record does not disclose the necessity for fixing such differential or afford a sufficient basis for determining its amount. The prayer therefor must be denied.

An order will be entered accordingly.

39 I. C. C.

No. 8282.
JULIUS SEIDEL LUMBER COMPANY
v.
MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted November 24, 1915. Decided May 19, 1916.

Rate legally applicable to the transportation of a carload of pine lumber from St. Louis, Mo., to Dundee, Ill., not shown to be unreasonable. Shipment found to have been overcharged. Reparation awarded.

R. T. Thomann for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with its principal office at St. Louis, Mo. By complaint, filed August 30, 1915, it alleges that the charges collected by defendants for the transportation of a carload of pine lumber shipped from St. Louis to Dundee, Ill., September 23, 1913, were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of 8 cents per 100 pounds. Reparation is asked.

The car was specifically routed by the shipper, "C. & E. I., c/o C. & N. W.," and was moved from complainant's plant at St. Louis by the Missouri Pacific Railway to the yards of the Terminal Railroad of St. Louis; by that road to the Chicago & Eastern Illinois Railroad; by the Chicago & Eastern Illinois to Englewood, Ill., within the Chicago switching district; and by the Chicago & North Western Railway thence to destination. The shipment weighed 35,700 pounds, and charges were collected in the sum of \$49.21, which were borne by complainant. No joint rate was applicable over the route of movement, and the legal rate was 13.5 cents per 100 pounds, composed of a rate of 8 cents from St. Louis to Englewood and a rate of 5.5 cents beyond. The shipment, therefore, was overcharged \$1.01. A joint rate of 8 cents was contemporaneously applicable on like traffic over four other routes in which the Chicago & North Western participated, and on December 24, 1913, an 8-cent rate was made applicable over the route of movement. The rate over all of these routes has since been increased and is now 8.5 cents. The shipment moved approximately 340 miles. The rate charged yielded a revenue of nearly 8 mills per ton-mile. The rate on the basis of which reparation is asked would yield 4.7 mills.

Defendants were not represented at the hearing, but denied in their several answers that the rate charged was unreasonable.

The existence of a lower rate over the other routes and the subsequent establishment of that rate over the route of movement to meet the rates maintained by way of competing routes do not warrant the condemnation of the rate charged. If complainant had not designated any routing or had designated any of the routes by which an 8-cent rate applied it could have avoided the damage alleged.

We find that the rate charged has not been shown to have been unreasonable, but that the overcharge of \$1.01 should be refunded to complainant, with interest from October 6, 1913.

An appropriate order will be entered.

39 L. C. C.

No. 7793.

J. C. HUBINGER BROTHERS COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted October 1, 1915. Decided May 24, 1916.

A rate of 80 cents per 100 pounds from Keokuk, Iowa, to Portland, Oreg., and north Pacific coast points on shipments of glucose in tank cars found just and reasonable. Reparation awarded for payment of a rate in excess thereof.

J. H. Henderson and Dwight N. Lewis for complainant.

John T. Bowe and R. H. Countiss for defendants.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

At the present time there is applicable on shipments of glucose in tank cars from Keokuk, in the state of Iowa, to north Pacific coast points, a commodity rate of 80 cents per 100 pounds, the minimum weight being the capacity of the car. There is also applicable a rate of 75 cents per 100 pounds when box-car equipment is used and the glucose is contained in barrels, the carload minimum weight being 36,000 pounds. The rate on glucose in tank cars is alleged to be unreasonable and unjustly discriminatory in so far as it exceeds the lower rate on the same commodity when shipped in barrels and handled in box cars. The establishment of a reasonable rate for the future is asked with reparation on all shipments upon which a rate higher than 75 cents has been paid.

Although the ratings in official, western, and southern classifications are not altogether comparable, it is stated of record that in the absence of commodity rates glucose takes fifth-class rates in the three classification territories. The fifth-class rate in effect from Keokuk to Portland, in the state of Oregon, a distance of about 2,100 miles, was at the time of the hearing \$1.68. The present 80-cent rate is therefore less than 50 per cent of the fifth-class rate. In *Glucose from Chicago*, 36 I. C. C., 379, we held that the carriers had justified a rate on glucose, when shipped in tank cars or barrels, from Chicago to New York, of 25 cents per 100 pounds, this being 80 per cent of the fifth-class rate of 31.5 cents. In that case it was shown that the rate on glucose was held down by the rate on corn.

The record before us shows that there is no return loading from the Pacific coast for the tank-car equipment, while box cars may be utilized in both directions. Although but few claims for loss or damage are filed on this traffic, they are more frequent in the case of barrel shipments than when the movement is in tank cars. It is stated of record that the average weight of the shipments made by the complainant in tank cars was 93,600 pounds; and in box cars 52,000 pounds. In the case of barrel shipments the container must be furnished by the shipper and freight must be paid on the weight of the barrels as well as on the commodity itself. When shipments are made in tank cars the container is furnished by the railroad or by the shipper; if by the shipper payment is made by the carrier for the use of the car. The cost of transporting 8,000 gallons of glucose from Keokuk to Portland in box cars on the 75-cent rate would be \$772.20; if the shipment were made in a tank car on the 80-cent rate the cost would be \$748.80. Under the present relation of rates, therefore, the cost of transporting a gallon of glucose is less when the shipment is made in tank cars than when made in barrels. Numerous instances may be found in the tariffs where carriers have established rates on shipments in tank cars no higher than the rates on the same commodities shipped in barrels, and in some cases the tank-car rate is even lower. The defendants here contend that while glucose in barrels moves by water from the Atlantic seaboard to the Pacific coast there is no such movement of that commodity in tanks. Because of this competition they assert that the rate on glucose in barrels is lower than it should be and that the tank-car rate has been fixed at 80 cents in order fairly to balance with the barrel rate. The 80-cent rate appears to bear a fair relationship to other rates in the same general territory found by the Commission to be reasonable. In *Commercial Club, Salt Lake City, v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218, 236, we approved a rate on glucose of 65 cents from Chicago to Salt Lake City, a distance of 1,525 miles; in *City of Spokane v. N. P. Ry. Co.*, 19 I. C. C., 162, 179, 212, a rate of 72 cents was fixed for the haul from Chicago to Spokane. Applying the ton-mile earnings under this rate to the average distance from Keokuk of 2,200 miles, a rate of 86 cents would result. The rate from Keokuk to Denver, a distance of 851 miles, is 52 cents.

From a careful examination of the record we have reached the conclusion, and so find, that the rate of 80 cents is neither unreasonable nor unduly discriminatory.

On one tank-car shipment delivered to the Chicago, Burlington & Quincy Railroad on October 21, 1913, the fifth-class rate of \$1.68 was charged and collected. Under the interpretation placed by the

defendants upon the tariff in effect at the time that was the only rate that could lawfully be applied. The tariff provision in question reads as follows:

Sirup * * * having glucose base. * * * in glass or earthenware, packed in boxes, or in metal cans boxed, or in bulk in barrels, * * * or pails; glucose; corn or grape sugar; in barrels, minimum carload weight 80,000 pounds.

It is the contention of the complainant that the insertion of the semicolon after the word "glucose" and following the word "pails" places no limitation upon the manner in which glucose might be shipped, and that the words "in barrels" limit or modify the words "corn or grape sugar" and not glucose. The same reasoning would show a similar isolation of "corn or grape sugar," which words are also followed by a semicolon, and would leave no prescribed carload minimum. If the interpretation of the complainant be accepted the lawful rate was a commodity rate of 75 cents. In our opinion, however, the words "in barrels" limit glucose, and this being the case the commodity description was not applicable to glucose in tank cars. No commodity rate being prescribed, therefore, the only legal rate was the fifth-class rate of \$1.68, upon the basis of which charges were paid by the complainant.

Upon the record we find: That on October 21, 1913, the complainant shipped a carload of glucose in a tank car from Keokuk to Portland; that such shipment weighed 93,300 pounds; that the complainant paid and bore thereon the established tariff rate of \$1.68 per 100 pounds; that the rate so paid was excessive and unreasonable to the extent that it exceeded 80 cents per 100 pounds, which latter would have been a reasonable rate for the service, and that said rate will be a maximum reasonable rate for the future; that the complainant was damaged by the payment of said unreasonable rate to the extent of the difference between the amount paid at the rate herein found unreasonable and the amount it would have paid at the rate herein found reasonable. The amount of reparation due can not be determined from this record since neither the date from which interest runs nor the routing of the shipment is shown. The complainant should submit to defendants for verification a statement showing these facts. When this is done and the statement filed here we will consider further issuing an order awarding reparation.

As the 80-cent rate has been in effect for nearly two years, no order requiring its maintenance for the future is necessary.

39 I. C. C.

No. 7605.¹
CONCORDIA COMMERCIAL CLUB ET AL.
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 18, 1915. Decided May 29, 1916.

1. Rates on classes and certain commodities to Concordia, Kans., from St. Louis, Mo., and points taking same rates or rates based thereon found to be unreasonably prejudicial to Concordia to the extent that they exceed the rates contemporaneously maintained and applied on like traffic from the same points of origin to Salina, Kans.
2. Rates on butter, eggs, and dressed poultry, in carloads, from Concordia to St. Louis proper and also when destined to points east of the western termini of the trunk lines found to be unreasonably prejudicial to Concordia to the extent that they exceed by more than 3 cents per 100 pounds the rates contemporaneously maintained from Washington, Kans., to the same destinations.
3. Rates on canned goods from Louisville, Ky., and Baltimore, Md., to Concordia found to be unreasonably prejudicial to Concordia to the extent that they exceed rates from the same points of origin to Salina.
4. Rates on certain commodities from New Orleans, La., Beaumont and Port Arthur, Tex., to Concordia, found to be unreasonably prejudicial to Concordia to the extent that they exceed the rates contemporaneously maintained to Salina by more than the amounts stated in the report.

E. H. Hogueland for complainants.

Fred G. Wright, H. G. Herbel, T. J. Norton, R. B. Scott, Kenneth F. Burgess, and H. A. Scandrett for defendants.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

These complaints are brought by the Concordia Commercial Club, a voluntary organization of individuals, companies, commercial and business corporations and associations, of Concordia, Kans., and by the Concordia Mercantile Company, a corporation engaged in business at that place.

The complaint in No. 7605, as amended, attacks the following rates as unreasonable and unjustly discriminatory:

(1) Class and commodity rates from St. Louis, Mo., and points taking the same rates, to Concordia.

¹The proceeding also embraces complaint in No. 7723, Concordia Commercial Club v. Alabama & Vicksburg Railway Company et al.

(2) Commodity rates on butter, eggs, and dressed poultry, in carloads, from Concordia (a) to St. Louis and points taking the same rates, and (b) to St. Louis when destined to points east of the western termini of the eastern trunk lines, which means, generally speaking, east of a line from Buffalo, N. Y., to Pittsburgh, Pa.

(3) Proportional rates from St. Louis, and points taking the same rates, to Concordia, applicable on traffic originating east of the Indiana-Illinois state line.

(4) Rates on canned goods, consisting of canned fish, vegetables, fruits, jellies, jams, butters, preserves, mincemeat, sauerkraut, and pickles, in straight or mixed carloads, from Louisville, Ky., via all rail, and from Baltimore, Md., via rail and water, to Concordia.

The complaint in No. 7722 alleges that the following rates are unreasonable and unjustly discriminatory:

(1) Rates from New Orleans, La., and points taking the same rates, to Concordia, on bananas, sugar, and canned goods, in carloads; green and roasted coffee, and rice, in carloads and less than carloads.

(2) Rates from Beaumont and Port Arthur, Tex., to Concordia on rice, in carloads and less than carloads.

Through rates from Chicago, Peoria, and points taking same rates, to Concordia being made by the addition of differentials to the rates from St. Louis are, because of this relationship, indirectly involved in No. 7605.

We are asked in each case to establish just and reasonable rates in lieu of those of which complaint is made.

Concordia is situated in a rich farming community in the north central part of Kansas. It is 155 miles west of Atchison, Kans., on that branch of the Missouri Pacific Railway which extends from Atchison to Stockton, Kans., a distance of 250 miles. A branch of this line extends northward from Concordia 107 miles to Prosser, Nebr. From the main line of the Chicago, Burlington & Quincy Railroad through Nebraska a branch extends from Odell in that state and terminates at Concordia. A branch of the Atchison, Topeka & Santa Fe Railway extends from Strong City, Kans., on the south to Superior, Nebr., through Concordia, which latter point is the terminus of a branch of the Union Pacific extending from Junction City, Kans. Concordia is a wholesale jobbing and distributing center. It enters into competition in certain mercantile lines with neighboring cities such as Salina, Abilene, Topeka, Atchison, and Leavenworth, Kans.; Kansas City and St. Joseph, Mo.; Omaha, Lincoln, and Beatrice, Nebr., for the trade of the territory adjacent to Concordia.

Although these complaints attack the reasonableness of the rates in and of themselves, the evidence in support of that allegation consists principally of analyses made for the purpose of comparing the

rates complained of with rates to the Missouri River cities and competing points in Kansas and Nebraska. The essence of the complaints is discrimination, and the evidence adduced and the arguments based thereon are directed chiefly to that issue. The gist of the testimony relates to the competition which Concordia meets from Beatrice and Lincoln, Nebr., the Missouri River cities, and Topeka and Salina, Kans. It is specifically averred that the adjustment of rates from the points of origin indicated to Concordia and the competing points named is unduly preferential to the latter and unjustly prejudicial to Concordia.

NO. 7605. RATES FROM MISSISSIPPI RIVER POINTS AND EAST THEREOF.

Subsequent to the filing of this complaint some of the rates attacked were slightly reduced as a result of readjustments necessitated by our findings in *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673, more particularly referred to hereinafter. Further reductions were made following our decision in *Iowa State Board of Railroad Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 193; 563. The complaint was amended to bring the changed rates in issue. All rates herein are stated in cents per 100 pounds.

The class and commodity rates and the average distances and short-line distances, as shown on the record, from Mississippi River crossings to Concordia, Missouri River cities, and the other cities alleged to be preferred are stated in the following table:

Comparative statement of rates on classes and commodities from Mississippi River crossings, including St. Louis, to Concordia, and to competing points named.

From Mississippi River.	To Concordia, 453, ¹ 479. ²	To Beatrice, 398, ¹ 456. ²	To Lincoln, 384, ¹ 464. ²	To Salina, 463, ¹ 463. ²	To Topeka, 337, ¹ 344. ²	To Missouri River, 293. ¹
First class.....	\$1.10	\$0.79	\$0.65	\$1.07	\$0.80	\$0.60
Second class.....	.90	.57	.50	.88	.62	.45
Third class.....	.71	.43	.39	.72	.49	.35
Fourth class.....	.54	.35	.31	.55	.33	.27
Fifth class.....	.44	.28	.25	.45	.28	.23
Class A.....	.48 ³	.30 ³	.27 ³	.47	.32	.24 ³
Class B.....	.37 ³	.25 ³	.22 ³	.33	.26	.19 ³
Class C.....	.32	.23	.20	.31	.22	.17
Class D.....	.24 ³	.19 ³	.16 ³	.24	.18	.13 ³
Class E.....	.18 ³	.16	.14	.19	.15	.11
Agricultural implements.....	.45 ³	.28 ³	.25 ³	.43 ³	.32	.22 ³
Agricultural implements and wagons.....	.45 ³	.28 ³	.25 ³	.47	.32	.22 ³
Canned goods and beans.....	.44	.28	.25	.42	.26	.23
Coffee.....	.44	.28	.25	.42	.26	.22
Bags and bagging.....	.52	.24	.20	.53 ³	.35	.23
Do.....	.43	.24	.20	.45	.28	.16
Paper.....	.37	.21	.18	.43	.26	.15
Paper and paper articles.....	.40	.24	.21	.45	.28	.18
Building paper.....	.23	.17	.14	.28	.21	.11
Starch.....	.25	.19	.16	.40	.23	.13
Sugar.....	.44	.28	.25	.30	.25	.29
Sirup.....	.40 ³	.24 ³	.21 ³	.28 ³	.23	.18 ³
Wire and nails.....	.44	.28	.25	.45	.28	.22

¹ Average short-line distance from Mississippi River crossings.
² Short-line distance from St. Louis, Mo.

Sugar, beans, canned goods, and coffee, which move to Beatrice and Concordia on fifth-class rates, are some of the principal commodities in respect of which complainants assert that the present adjustment of rates from the Mississippi River places them at a disadvantage in the territory adjacent to Concordia. They earnestly complain of the alleged discrimination in the rates on sugar in carloads from St. Louis, and cite the fact that Salina enjoys a commodity rate of 30 cents or only 2 cents higher than the rate to Beatrice, whereas the rate to Concordia is 44 cents.

Complainants present exhaustive analyses of the rates cited showing the per ton-mile, per car, and per car-mile revenues. They also show that through class and commodity rates from St. Louis to Concordia are a much higher per cent of the combination of intermediate rates on Missouri River crossings than are the through rates from St. Louis to Beatrice and Lincoln. Taking the average distances from Mississippi River crossings, it is shown that the average distance to Concordia is 114 per cent of that to Beatrice, 118 per cent of that to Lincoln, 155 per cent of that to Missouri River cities, 134 per cent of that to Topeka, and but 98 per cent of that to Salina. Complainants suggest various constructive rates based upon this distance relationship and show that the rates to Concordia would be materially lower in nearly all instances if they were made the same per cent of rates to the respective competing points that the average distance from the Mississippi River to Concordia is of the average distances to the respective competing points.

Comparison is made of the present rates to Concordia, Beatrice, Lincoln, Salina, and Topeka with the rates that would result from the application to those points of the Iowa-Nebraska-Kansas distance scale prescribed in *Iowa State Board Railroad Commissioners v. A. E. R. R. Co.*, *supra*. From this comparison it appears that the rates to Beatrice and Lincoln are substantially less, and to Topeka somewhat less, than the rates that would result from the application of that scale. The rates to Concordia and Salina, however, are with few exceptions somewhat higher than they would be under that scale.

RATES ON CANNED GOODS, ETC., FROM LOUISVILLE, KY., AND
BALTIMORE, MD.

The rate on canned goods and preserves from Louisville, Ky., to Concordia is 57.8 cents. An exhibit filed by complainants shows the following comparison of that rate and the distance to Concordia with rates and distances to competing points:

Comparative statement of distances and rates on canned goods and preserves, carloads, from Louisville, Ky., to Concordia and to competing points named.

From Louisville to—	Miles.	Rates.
Concordia.....	727	57.8
Beatrice.....	672	43.8
Lincoln.....	658	40.8
Salina.....	737	49.7
Topeka.....	611	41.8
Missouri River.....	567	35.8

¹ Preserves, 52.7 cents.

The rates on canned goods, carloads, from Baltimore to Concordia and competing points named via rail-and-water routes were changed subsequent to the filing of the complaint and were at the time of hearing as follows:

From Baltimore.	To Con- cordia.	To Beat- rice.	To Lincoln.	To Salina.	To Topeka.	To Mis- souri River.
Rate.....	71	55	51	1 07	53	48

¹ Does not apply on preserves. On mixed shipments which include preserves, combination of rates on Mississippi River of 69 cents applies.

Complainants' evidence and contentions respecting rates on canned goods and preserves from Louisville and Baltimore are of the same general character as have been stated in connection with class and commodity rates from Mississippi River points.

RATES ON BUTTER, EGGS, AND POULTRY, EASTBOUND.

The following table taken from one of complainants' exhibits presents a comparison of the rates on butter and eggs in carloads from Concordia to St. Louis, proper, and when destined to points east of the western termini of the trunk lines, with the rates on those commodities from the points at which complainants meet the most severe competition and which they allege are preferred in the adjustment of rates:

To Mississippi River from—	Average distances.	Rates.	To Mississippi River from—	Average distances.	Rates.
	Miles.			Miles.	
Concordia.....	453	56	Topeka.....	337	39
Beatrice.....	398	40	Hanover.....	408	45
Lincoln.....	384	39	Washington.....	421	47

The rates shown above are those to Mississippi River points proper. On traffic destined to points east of the western termini of the trunk lines the rates to the river are 1 cent less. Rates on dressed poultry are, in each instance, 1½ cents less than the rates on butter and eggs.

Concordia handles considerable quantities of butter, eggs, and poultry at places east and north thereof, which are in common territory for buyers at Beatrice, Lincoln, Missouri River points, and Topeka, and, to some extent, at Salina. Shipments are in some instances made direct to final destinations, but for the most part are concentrated at Concordia and reshipped from there. A large proportion of these commodities is shipped to territory on and east of the Mississippi River. The Concordia dealers buy these products in competition with shippers at the competing points mentioned and insist that they are put to a great disadvantage by the differences in the rates to the Mississippi River proper, and also in those applicable on shipments destined to points east of the western termini of the trunk lines. The rate from Concordia to the Mississippi River proper being 56 cents and that from Beatrice 40 cents, complainants, selling as they do in common markets with their competitors, must absorb the difference in the freight rates. Washington and Hanover, Kans., are points on the Chicago, Burlington & Quincy, 32 miles and 45 miles, respectively, east of Concordia. Washington is also reached by the Missouri Pacific and Hanover by the St. Joseph & Grand Island Railway. The rate from Washington, which is 9 cents lower than that from Concordia, appears to bear a proper relationship to the rates from points farther east, such as Beatrice and Topeka. The rate from Concordia, however, is not properly aligned with the rates from Washington and other competing points named.

READJUSTMENTS FOLLOWING THE KANSAS CASE.

In *State of Kansas v. A., T. & S. F. Ry. Co., supra*, we prescribed specific class rates from Mississippi River crossings to Salina, Topeka, Wichita, Hutchinson, Dodge City, and Goodland, and required defendants to make a corresponding readjustment of their class and commodity rates to Kansas points generally. In readjusting their rates following our decisions in that case and in *Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., supra*, defendants continued in effect and reduced to some extent proportional class rates to Concordia from the Mississippi River, applicable on traffic originating east of the Indiana-Illinois state line. To Salina and other Kansas points one scale was made applicable both on traffic from the Mississippi River and from points beyond. The local class rates from the Mississippi River to Concordia were reduced on classes 1, 2, 3, 4, 5, A, and C. These local class rates are higher than the proportional class rates and apply on traffic from St. Louis and points taking the same rates, and as bases for through rates from Chicago, Peoria, and other points from which through rates are made by the addition of differentials over St. Louis or other Mississippi River crossings.

Prior to the changes resulting from those cases, the class rates from Mississippi River points to Concordia and Salina were as follows:

To—	1	2	3	4	5	A	B	C	D	E
Concordia:										
Local.....	111	90½	73	57	48	49½	37½	32½	24½	18½
Proportional.....	106	86½	70	54	46	47	36	30½	23	17½
Salina.....	116	95	77½	59	49	51½	40½	34	26½	21

The readjustment mentioned resulted in the establishment of the following local and proportional class rate scales from the Mississippi River to Concordia and Salina:

To—	1	2	3	4	5	A	B	C	D	E
Concordia:										
Local.....	110	90	71	54	44	48½	37½	32	24½	18½
Proportional.....	106	86	68	51	42	46	36	30½	23	17½
Salina: Local and proportional.....	107	88	72	55	45	47	38	31	24	19

The manner and degree in which these changes affected the relationship of class rates as between Concordia and Salina, in cents per 100 pounds, is shown in the table below:

	1	2	3	4	5	A	B	C	D	E
Advantage of Concordia over Salina in local and proportional rates prior to adjustment prescribed in the Kansas case:										
Local.....	5	4½	4½	2	1	2	3	1½	2	2½
Proportional.....	10	8½	7½	5	3	4½	4½	3½	3½	4½
Present advantage in rates on local traffic originating at Mississippi River crossings and points taking same rates, or arbitraries based thereon, such as Chicago, Peoria, etc.:										
Concordia over Salina.....			1	1	1		½			
Salina over Concordia.....	3	2				1½		1	½	
Present advantage of Concordia over Salina in rates on traffic originating east of Indiana-Illinois state line: Concordia....	1	2	4	4	3	1	2	½	1	1½

NO. 7722. COMMODITY RATES FROM NEW ORLEANS, LA.

The following table shows the distances via direct routes and the rates from New Orleans to Concordia and competing points on bananas, sugar, and canned goods, in carloads, and on green and roasted coffee and rice, in carloads and less than carloads:

To—	Dis- tances.	Ba- nanas, C. L.	Sugar, C. L.	Canned goods, C. L.	Green coffee.		Roasted coffee.		Rice.	
					C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.
Concordia.....	Miles.	90	45	53	61	70	66	75	56	70
Beatrice.....	1,013	73	38	44	41	48	46	53	43	48
Lincoln.....	1,060	73	35	44	33	48	38	53	42	.....
Salina.....	1,078	73	40	54	53	60	58	74	44	55
Topeka.....	980	73	40	48	45	55	50	60	44	55
Kansas City....	906	65	33	33	35	40	35	45	37	.....

A mercantile company at Concordia receives about 30 carloads of bananas per year. The rate from New Orleans is 90 cents; to Beatrice on the northeast, Topeka on the east, and Salina on the south the rate is 73 cents; to lower Missouri River cities the rate is 65 cents. It is insisted that in order to enable it to compete Concordia should have equally low rates. A witness for the company mentioned testified that he meets competition from Beatrice in territory to the north of Concordia.

Bananas from New Orleans to points in Kansas are usually transported through Kansas City. The short-line distances shown above are somewhat less than the distances via the routes over which bananas are usually transported as found in *Rates on Bananas from Gulf Ports*, 30 I. C. C., 510, 514, where it was shown that the distances via the routes of movement are: 879 miles to Kansas City, 947 miles to Topeka, 1,087 miles to Lincoln, and 1,076 miles to Beatrice.

Complainants compare the per ton-mile, per car, and per car-mile revenues yielded by the rates from New Orleans to Concordia on these commodities with the per ton-mile and per car-mile revenues yielded by the rates to competing points named.

The short-line distances from New Orleans to Concordia, Beatrice, and Salina are over the same lines of railroad and through the same junction points. Concordia is 47 miles less distant from New Orleans than is Beatrice and 108 miles and 33 miles more distant than are Topeka and Salina, respectively. A witness for defendants testified that only a comparatively small portion of the traffic is moved over the short-line routes which are composed of lines west of the Mississippi River; that rates from New Orleans to the Missouri River and to interior Kansas points are made by carriers operating east of the Mississippi River to Memphis and St. Louis in connection with carriers whose lines extend thence to the Missouri River and beyond; and that the superior service and equipment of the latter routes enable them to secure the greater part of the traffic. The short-line distance from St. Louis to Concordia is but 16 miles greater than that to Salina. The percentages that rates on sugar, green coffee, roasted coffee, rice, and canned goods, in carloads, from New Orleans to Concordia exceed those to the competing points named is shown in the following table which we have compiled:

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Commodity and destination.	Rates.	Percentage of rate difference.
Sugar:		
Concordia.....	45	
Beatrice.....	38	Concordia 20 per cent over Beatrice.
Topeka.....	40	Concordia 13 per cent over Topeka.
Salina.....	40	Concordia 13 per cent over Salina.
Green coffee:		
Concordia.....	61	
Beatrice.....	41	Concordia 50 per cent over Beatrice.
Topeka.....	45	Concordia 35 per cent over Topeka.
Salina.....	53	Concordia 15 per cent over Salina.
Roasted coffee:		
Concordia.....	66	
Beatrice.....	46	Concordia 45 per cent over Beatrice.
Topeka.....	50	Concordia 32 per cent over Topeka.
Salina.....	58	Concordia 15 per cent over Salina.
Rice:		
Concordia.....	56	
Beatrice.....	43	Concordia 30 per cent over Beatrice.
Topeka.....	44	Concordia 27 per cent over Topeka.
Salina.....	44	Concordia 27 per cent over Salina.
Canned goods:		
Concordia.....	58	
Beatrice.....	44	Concordia 21 per cent over Beatrice.
Topeka.....	48	Concordia 21 per cent over Topeka.
Salina.....	54	Concordia 7 per cent over Salina.

RATES ON RICE FROM BEAUMONT AND PORT ARTHUR.

Complainants contend that Concordia should have at least as low rates as Beatrice on rice from Beaumont and Port Arthur, Tex. The rates are the same from both points of origin and are based on differentials of 5 cents in carloads and 10 cents in less than carloads under the rates from New Orleans. The following table, taken from one of complainants' exhibits, shows the short-line distances and the rates on carloads and less than carloads from Beaumont:

To—	Distance.	Rates.		To—	Distance.	Rates.	
		C. L.	L. C. L.			C. L.	L. C. L.
	<i>Miles.</i>				<i>Miles.</i>		
Concordia.....	923	51	60	Salina.....	822	39	45
Beatrice.....	962	38	43	Topeka.....	837	39	45
Lincoln.....	980	37	42	Kansas City.....	779	32	37

Looking to the percentage relationship in the carload rates we find that the rate to Concordia is 34 per cent higher than that to Beatrice, and 31 per cent higher than that to Topeka and Salina.

CONCLUSIONS.

The issues presented by these cases had their inception in, and the material issues are inseparably connected with, the alleged disadvantages of rate adjustments which affect the ability of complainants to do a jobbing business in the territory which they consider to be properly tributary to Concordia. It is shown that mercantile enterprises, established in Concordia within comparatively recent times, 39 I. C. C.

meet keen competition from older and presumably more firmly established dealers at competing points, such as Lincoln, Beatrice, the Missouri River cities, Topeka, and Salina, which have been commercial and industrial centers for many years. Each of the competing cities is larger than Concordia; their advent as shipping centers antedates that of Concordia, and their volume of traffic naturally is greater. With the exception of Salina they have natural advantages not enjoyed by Concordia, and their railroad locations are more favorable in many respects. Topeka, Beatrice, and Lincoln all have the advantage of proximity to the Missouri River, and rates to those points have been affected largely by their advantageous geographical location.

In earlier years rates from the Mississippi River and points east thereof to interior Kansas and Nebraska points were made on the Missouri River combinations. With the construction of new lines of railroad and the extension across the Missouri River of lines which for years had terminated at that waterway, new conditions developed. Competition of communities and carriers became more keen and the combination basis of rates began to break down at some of the more important points, such as Lincoln and Beatrice. Defendants' evidence concerning the structure and the history of the rate adjustments from the Mississippi River and east thereof need not be discussed at length here, for the Commission has considered and dealt with the general situation in other cases. *Lincoln Board of Trade v. B. & M. R. R. Co. in Nebr.*, 2 I. C. C., 147; *Lincoln Commercial Club v. C., R. I. & P. Ry. Co.*, 13 I. C. C., 319; *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673; *Beatrice Commercial Club v. C., B. & Q. R. R.*, 31 I. C. C., 173.

Concordia is beyond the sway of the competitive influences which have determined the present adjustment of rates to Missouri River cities, and which in turn have been reflected at Topeka, Lincoln, and Beatrice. The circumstances and conditions surrounding transportation from the Mississippi River and points east thereof to Concordia are substantially dissimilar from those surrounding transportation to the other points named and do not justify as low rates, or rates conforming to the relative difference in distances, on traffic from that territory. As to such traffic the situation of Concordia is more nearly parallel with that of Salina. The distances to Concordia and Salina are about equal and the transportation and competitive conditions which affect the rates to both points are substantially the same.

As to traffic from the southern states and from southwest of the Mississippi River we have found in other cases that the situations of Topeka, Beatrice, and Lincoln in respect of the relation of rates

between those points on the one hand and the Missouri River cities on the other is somewhat more favorable than it is with regard to traffic from the Mississippi River and east thereof. In view of this fact the carriers were required in *Lincoln Commercial Club v. C., R. I. & P. Ry. Co.*, *supra*, to establish rates to Lincoln on traffic from points in Kansas and territory south and west of the Mississippi River which, except as to certain commodities, were not higher than the rates to Omaha, to which Lincoln is intermediate. The demands of Beatrice, aided by carrier competition, later resulted in an adjustment of rates to that point designed to put it on a more nearly equal basis with Lincoln and Omaha. The different circumstances and conditions which distinctly affect traffic from the south and southwest to Lincoln and Beatrice obtain in some degree at least in respect of traffic to Topeka. In *Rates on Bananas from Gulf Ports*, *supra*, Topeka's proximity to the Missouri River, its favorable location on main lines of railroad, its shorter distance, and the fact that traffic was in some instances hauled through Topeka to the northern points, were all potent factors in determining that the rates on bananas from the Gulf ports to Topeka were unjustly discriminatory as compared with rates on like traffic to Lincoln and Beatrice.

The differences in distances via the several routes from New Orleans to Concordia and to Salina are so small that if distance alone were controlling they would be negligible. The conditions and circumstances surrounding the movement of these commodities from New Orleans are not, however, quite the same as those surrounding the movement of traffic in general from the Mississippi River and points east thereof. The rate on bananas from New Orleans to quite a group of important points in Kansas, such as Wichita, Hutchinson, Emporia, Topeka, and Salina, is the same, 73 cents. To Concordia and other points in Kansas and Nebraska north of Salina the rates are higher. While there is not the same uniformity among the rates from New Orleans to this territory on sugar, coffee, rice, and canned goods, the same principle of higher rates to points north of Salina is followed. We think that the rates on these commodities from New Orleans to Concordia may reasonably be somewhat higher than to Salina, but that the present differences are too great. As stated, rates on rice from Beaumont and Port Arthur to Concordia and other points named in the complaint are adjusted differentially in relation to the rates from New Orleans. We find nothing in the record which would warrant us in disturbing that relationship.

Based upon consideration of all the facts of record, we find:

1. That defendants' present class rates to Concordia, Kans., applicable on traffic from St. Louis, Mo., and points taking the same rates, are unreasonably prejudicial to Concordia to the extent that they

exceed the class rates contemporaneously maintained by defendants for the transportation of like traffic from the same points of origin to Salina, Kans.

2. That defendants' present rates to Concordia, Kans., on sugar, coffee, beans, canned goods, and sirup, in carloads, applicable on traffic originating at St. Louis, Mo., and points taking the same rates, are unreasonably prejudicial to Concordia to the extent that they exceed defendants' rates contemporaneously maintained for the transportation of like commodities from the same points of origin to Salina, Kans.

3. That defendants' present rates to Concordia, Kans., on agricultural implements, agricultural implements and wagons, bags and bagging, paper, paper and paper articles, building paper, starch, wire and nails, in carloads, applicable on traffic originating at St. Louis, Mo., and points taking the same rates, are not shown to be unreasonable or prejudicial.

4. That defendants' present rates for the transportation of butter, eggs, and dressed poultry, in carloads, from Concordia, Kans., to St. Louis, Mo., and points taking the same rates, and to St. Louis, Mo., when destined to points east of Buffalo, N. Y., or Pittsburgh, Pa., are unreasonably prejudicial to Concordia to the extent that they exceed by more than 3 cents per 100 pounds the rates contemporaneously maintained by defendants for the transportation of like traffic from Washington, Kans., to the said destination points and territories.

5. That the present proportional class rates from St. Louis, Mo., to Concordia, Kans., applicable on traffic originating east of the Indiana-Illinois state line, are not shown to be unreasonable or prejudicial.

6. That defendants' present rates, applicable over their all-rail routes, for the transportation of canned goods, viz, canned fish, vegetables, fruits, jellies, jams, butters, preserves, mincemeat, sauerkraut, and pickles, in straight or mixed carloads, from Louisville, Ky., and for the transportation of like commodities over their rail-and-water routes from Baltimore, Md., to Concordia, Kans., are unreasonably prejudicial to Concordia to the extent that they exceed the rates contemporaneously maintained by defendants for the transportation of like commodities over the same routes from the same points of origin to Salina, Kans.

7. That defendants' rates for the transportation of bananas, sugar, canned goods, green and roasted coffee, in carloads, and rice, in carloads and less than carloads, from New Orleans, La., to Concordia, Kans., are unreasonably prejudicial to Concordia to the extent that they exceed the rates contemporaneously maintained by defendants for the transportation of like commodities from New Orleans, La., to

Salina, Kans., by more than the following differentials, in cents per 100 pounds:

Commodities.	Differential.		Commodities.	Differential.	
	L. C. L.	C. L.		L. C. L.	C. L.
Bananas.....		7	Green coffee.....		4
Sugar.....		3	Roasted coffee.....		4
Canned goods.....		3	Rice.....	6	4

8. That defendants' rates for the transportation of rice, in carloads and less than carloads, from Beaumont and Port Arthur, Tex., to Concordia, Kans., are unreasonably prejudicial to Concordia to the extent that they exceed the rates contemporaneously maintained by defendants for the transportation of rice from the same points of origin to Salina, Kans., by more than 4 cents per 100 pounds, in carloads, and by more than 6 cents per 100 pounds in less than carloads.

It is expected that through rates on classes and commodities to Concordia, Kans., from Chicago, Peoria, and points taking the same rates shall continue to be made by the addition of the present differentials from said points of origin to St. Louis to the rates here established from St. Louis.

Our findings herein with respect to rates on commodities from New Orleans are without prejudice to any conclusions which we may reach in cases Nos. 6119 and 6228, which involve rates on the same commodities from New Orleans to Kansas jobbing centers and to intermediate points in Kansas on the through routes from New Orleans to the Missouri River.

Appropriate orders will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 773.

LUMBER FROM LOUISIANA POINTS.

Submitted April 7, 1916. Decided May 29, 1916.

Proposed cancellation of joint through rates on yellow-pine lumber from producing points on the Louisiana Western Railroad, Lake Charles & Northern Railroad, and Morgan's Louisiana & Texas Railroad & Steamship Company to points on the Santa Fe system in Texas, found not justified.

C. W. Owen for Morgan's Louisiana & Texas Railroad & Steamship Company, Iberia & Vermillion Railroad Company, Louisiana Western Railroad Company, and Lake Charles & Northern Railroad Company.

Drew Head for Gulf, Colorado & Santa Fe Railway Company; Panhandle & Santa Fe Railway; and Fort Bolivar Iron Ore Railway.

E. H. Thornton for Galveston, Harrisburg & San Antonio Railway Company; Texas & New Orleans Railroad Company; Houston & Texas Central Railroad Company; Houston, East & West Texas Railway Company; and Houston & Shreveport Railroad Company.

REPORT OF THE COMMISSION.

MEYER, Chairman:

Rates on lumber from points in Louisiana to points in Texas are grouped both as to points of origin and destination. From points on its lines in Louisiana to points on its lines in Texas, the Santa Fe system publishes rates lower by an average of about 3 cents per 100 pounds than the rates from points in the same groups on other lines to the same destinations. By items in supplements published to become effective January 4, 1916, it was proposed to cancel joint through rates on yellow-pine lumber from points in Louisiana on the Louisiana Western Railroad, Lake Charles & Northern Railroad, and Morgan's Louisiana & Texas Railroad & Steamship Company to points in Texas on the Santa Fe system. Upon protests of lumber mills located at Ragley, Eunice, and Lake Charles, La., the operation of these items was suspended until May 3, 1916, and later to November 3, 1916.

Respondents offered no evidence in support of the reasonableness of the combination rates which would result from the cancellation

of the present joint through rates. Their only justification is the claim that producers of yellow-pine lumber so compete among themselves that the manufacturer who has to pay the higher rates from points off the Santa Fe system can not meet the competition of the manufacturer located on that system; and that, therefore, rates from respondents' lines to Santa Fe points can not be used, and are mere paper rates to cancel which would affect no one.

It appears that the joint through rates may be used. Better switching service and greater ease in obtaining cars from respondent lines makes of benefit to protestants the joint rates sought to be canceled.

In *Lumber Rates from Texas, Louisiana, and Arkansas*, 28 I. C. C., 471, the Santa Fe sought to increase rates on lumber from points of production in Texas, Louisiana, and Arkansas, received from connecting lines, to points in Oklahoma and Missouri. At page 474 we said:

The broad fundamental question involved in this case is whether the Santa Fe should be permitted to retain for itself the lumber market at points on its line for the benefit of producing points on its line to the exclusion of all others, except under a penalty of $3\frac{1}{2}$ cents per 100 pounds. We think this is an exercise of a carrier's rate-making power far too arbitrary and selfish to be permitted under the act. As a matter of sound policy under the law, a carrier is not justified in attempting to restrict its traffic to movement between points on its own line. Through rates are published from lumber-producing points on the Santa Fe to points of consumption on other lines allowing free movement at competitive rates; and, similarly, the Santa Fe should maintain competitive rates from connecting lines wherever it is possible to do so without loss.

A like situation was presented in *Nona Mills Co. v. K. C. S. Ry. Co.*, 39 I. C. C., 125, where the Commission found joint rates on lumber from Leesville, La., by way of the Kansas City Southern and the Gulf, Colorado & Santa Fe to points on the lines of the Santa Fe system, in the states of Texas and Oklahoma, to be unjustly discriminatory to the extent that they exceed the rates contemporaneously maintained from points on the lines of the Gulf, Colorado & Santa Fe, in Louisiana, to the same points.

We find and conclude upon a consideration of all the facts of record that respondents have not justified the proposed cancellation of the joint through rates in question, and an order in conformity with these findings will be entered.

No. 7959.¹
CHARLES PLATTS
v.
NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY ET AL.

Submitted January 18, 1916. Decided May 29, 1916.

Effective in February, March, and April, 1915, defendants filed tariffs providing, in effect, that they would thereafter discontinue the absorption of bunker icing charges on shipments of oysters from the Atlantic seaboard to western points. Upon complaint that the resulting increased rates are unreasonable and unjustly discriminatory; *Held*, That the defendants have justified the increased charges on carload shipments of shucked oysters, but that the increased charges on shipments of shucked oysters in less than carloads, and of oysters in the shell in carloads, have not been shown to be reasonable. Allegation of unjust discrimination not sustained.

A. E. Beck for complainants.

F. L. Ballard, H. J. Hart, and Parker McCollester for defendants.

L. D. Rosenheimer for Booth Fisheries Company, intervener.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Until the early part of 1915 a number of the carriers which participate in the transportation of oysters in carloads from the Atlantic seaboard to points in the west absorbed the cost of the ice placed in the bunkers of refrigerator cars for the protection of the oysters in transit. Effective in February, March, and April of that year tariffs were filed which provided, in substance, that the practice of absorbing the icing charges would thereafter be discontinued, and since that time the shippers have been obliged to pay the icing charges in addition to the transportation rates. The complainants allege that the increased charges are unreasonable, and the complaint in No. 8192 contains also an allegation of unjust discrimination and a prayer for reparation. The complainant in No. 8192 is a voluntary organization of oyster growers and dealers. The complainant in No. 7959 is the chairman of the traffic committee of that organization. The Booth Fisheries Company, of Chicago, intervened.

¹ The proceeding also embraces complaint in No. 8192. Oyster Growers & Dealers Association of North America v. Baltimore & Ohio Railroad Company et al.

Oysters are grown in large quantities along the Atlantic seaboard, the principal production being in Long Island Sound and Chesapeake Bay. The shipping points located in what is known as the northern field are served chiefly by the New York, New Haven & Hartford Railroad, while those in the southern field are served chiefly by the Pennsylvania Railroad and affiliated lines. All of the oysters consumed in the middle west are shipped from the Atlantic seaboard.

Prior to 1912 oysters were not shipped extensively in carload quantities. It is said that no carload shipments moved before 1907 or 1908. A few years ago a large number of the growers and dealers of oysters formed an organization known as the Oyster Growers and Dealers Association of North America, one of the complainants herein. Plans were made by the association to increase the use of oysters as a staple food product, particularly in the west. The association sought and obtained from the Official Classification Committee, effective March 1, 1912, the establishment of a first-class rating on shucked oysters, in carloads, the rating previously in effect having been one and one-half times first class, any quantity. The activity of the association and the establishment of a carload rating on a lower basis than the any-quantity rating previously in effect resulted in a material increase in the volume of oysters transported. Many shipments are now made to points as far west as Kansas City, Mo. During the season 1914-15 more than 5,400,000 pounds of oysters were shipped from South Norwalk, Conn., New Haven, Conn., Sayville, N. Y., and Warren, R. I., and during the calendar year 1914 the Star Union line, a fast freight line operating over the Pennsylvania system, carried 336 carloads of oysters from the Atlantic seaboard to points west of Pittsburgh, Pa.

Oysters are usually shucked before shipment, and are almost invariably shipped in refrigerator cars. The oyster meats are packed in tin or galvanized-iron cans varying in size from 1 to 5 gallons. The cans are covered only with friction tops. After they are placed in the car the cans are surrounded with crushed ice, and a layer of ice varying in thickness from 12 inches to 24 inches is placed over them. The ice thus used in the interior of the car weighs from 1 to 4 tons, varying with the weather and the size of the shipment. In some instances, and especially in the case of less-than-carload shipments, the cans are packed in ice in large barrels or other wooden containers. Three or four tons of ice are also placed in the bunkers. A car thus iced can be hauled from the producing points in the east as far as Cleveland, Ohio, or Detroit, Mich., without re-icing. On shipments to Chicago one re-icing of the bunkers is usually necessary, and when the destination is as far west as Omaha or Kansas City the inside of the car must be re-iced at the expense of con-

signor or consignee. Only the cost of the bunker icing is involved in this proceeding, the carriers never having absorbed any part of the cost of ice used in the interior of the car.

Oysters are usually shipped from small towns along the coast at which the carriers do not maintain icing stations, and the ice, whether supplied by the carrier or by the shipper, is purchased from local dealers at prices which vary from \$2.58 to \$10 per ton, a fair average being \$3 or \$3.50. Although some of the present tariffs state that the carriers, if requested to do so, will furnish the initial bunker ice at the current market price plus the cost of labor, the initial icing is almost invariably done by the shippers. The tariffs here under attack provide not only that the cost of the original bunker icing must be borne by the shipper, but that the carriers will impose a charge of \$2.50 per ton for ice placed in the bunkers en route, this to include labor and salt. Before the tariffs here in issue became effective the carriers absorbed the cost of all ice used in the bunkers, whether placed there at point of origin or at icing stations en route. The complainants do not contend that the proposed charge of \$2.50 per ton is excessive, or that the classification ratings are unreasonable. They contend that the present transportation rates were made to include the bunker icing; that the icing service has not been a free service; and that the rates are sufficiently high to yield reasonable remuneration to the carriers for the transportation service after deducting the cost of bunker icing.

The minimum weight prescribed for carload shipments of shucked oysters is 15,000 pounds. The average loading is approximately 17,400 pounds. The ice inside the car and the containers are assessed the same rates as the oysters, some of the tariffs providing an estimated weight of 12 pounds per gallon, increased from 10 pounds about three years ago. The oysters themselves weigh approximately 9 pounds per gallon, and the weight of the ice and containers averages 3 pounds per gallon of oysters. A carload contains approximately 1,500 gallons.

The average cost of shucked oysters ready for shipment is approximately 84 cents per gallon. The freight rate from points on Chesapeake Bay on carload shipments is the Baltimore first-class rate. That rate to Chicago is 70.8 cents per 100 pounds, making the rate about 8.5 cents per gallon of shucked oysters, estimated weight 12 pounds per gallon. It was testified that the wholesale price of shucked oysters in Chicago usually varies from \$1 to \$1.15 per gallon. A statement filed of record by a representative of the Booth Fisheries Company, intervener, shows that for the season 1914-15 the price varied from \$1.10 to \$1.75, and during the last season \$1.25 to \$1.65. The complainants' principal witness estimates that the cost of bunker icing

averages \$12 to \$14 per car. Figures submitted by the carriers, based on 188 cars which moved in 1914, shows the average cost to be \$16.24 per car. Since the average carload contains 1,500 gallons, it will be seen that the cost of bunker icing is in the neighborhood of 1 cent per gallon of oysters, less than 1 per cent of the wholesale price in Chicago.

Much evidence has been addressed to the question as to whether the rates on oysters were originally made by the carriers with a view to obtaining from this traffic revenue which would insure a reasonable return for the transportation service over and above the cost of bunker icing, and for that reason the history of the rates and of the carriers' practices has been shown at some length of record.

Official classification No. 1, published in 1887, provided that railroads "may" furnish ice for property rated third class or higher, the cost to be prorated by the carriers. This rule, like those in subsequent issues, was permissive in form, and individual lines were left free to adopt such rules and regulations in this respect as they chose. Until October 23, 1913, the New York, New Haven & Hartford Railroad consistently refused to absorb any charges for icing. They were absorbed, however, by certain fast freight lines which maintained a regular service from stations on the line of that carrier, as a result of keen competition with each other and with the express companies for this traffic. As the New York, New Haven & Hartford Railroad was the only carrier which served most of the shipping points in the northern field, it assumed a position of neutrality, refusing to bear any part of the absorption. Prior to 1906 the Pennsylvania Railroad and its affiliated lines furnished free icing only by special arrangement where competition demanded it. Beginning with 1906 tariffs were published specifically authorizing the absorption of bunker icing charges on shipments of oysters.

With a view to showing that the present rates on shucked oysters are sufficiently high to yield a fair return to the carriers for the transportation service after deducting the cost of bunker ice, complainants compare the carload and less-than-carload ratings on shucked oysters first class and one and one-half times first class, respectively, with the ratings of other food products in official classification. They show, for example, that bananas are rated third class in carloads and first class in less than carloads; that butter is rated second class, any quantity; fresh dressed meat, first class, any quantity, with much lower rates published by individual lines for the movement in carloads; cheese, third class, any quantity; fish, fresh or frozen, third class in carloads and first class in less than carloads; and live lobsters, third class in carloads and first class in less than carloads.

Some of these commodities, however, are so dissimilar to shucked oysters that the comparisons are not helpful. It is not shown that bananas are fairly comparable with oysters. Fresh meat moves in large volume eastbound, and competition with live stock is said to have been in part responsible for the lower rating on that commodity. Butter and cheese differ from oysters in that they are produced in many parts of the country, and move extensively in carload quantities throughout the year. The third-class rating on live lobsters, in carloads, is said to have been established to permit them to move in mixed carloads with clams, fish, and other sea food. The movement of live lobsters in straight carloads is negligible.

Defendants direct our attention especially to the fact that the prescribed minimum carload weight for shucked oysters, 15,000 pounds, is lower than that on any other perishable food product, and that the average loading is only slightly in excess of the prescribed minimum. Using for purposes of comparison the commodities named by complainants, defendants show that the minimum weight on fish is 24,000 pounds and the actual loading as high as 40,000 pounds. Fish move in much greater quantities than oysters, and are said to be less subject to deterioration. No minimum weights are prescribed for butter and cheese, the rating-applying any quantity, but it is said that there is a heavy movement of butter, the shipments often weighing 40,000 pounds or more. The loading of cheese is still heavier. Peaches and berries, other than cranberries, are rated first class in carloads and one and one-half times first class in less than carloads, but the carload minimum on peaches is 20,000 pounds and on berries 17,000 pounds. It does not appear that the defendants have ever offered free icing on peaches and berries.

The relatively low minimum weight on shucked oysters is said to have been established for commercial reasons. Small communities can not consume more than 1,500 gallons of oysters within a few days, and a material increase in the minimum weight would tend to reduce the number of carload shipments. The necessity for prompt disposition of the shipments after arrival at destination also makes a relatively low minimum advisable.

Defendants show that the movement of shucked oysters in carloads is seasonal in character, beginning about the 1st of October and ending about the 1st of May; that the movement is wholly in one direction; that the best equipment must be used; and that the shipments are invariably given expedited service.

Defendants have submitted evidence as to their earnings on this traffic. The short-line distance to Chicago from South Norwalk, Conn., is 969 miles. Based on the present first-class rate of 78.8 cents per 100 pounds a carload of oysters weighing 17,400 pounds yields

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the carriers a revenue of \$137.11, or 14.1 cents per car-mile. If icing charges in the sum of \$16.24 are absorbed, the revenue for the transportation service is \$120.87 per car, or 12.5 cents per car-mile. On 336 carloads of shucked oysters which moved via the Pennsylvania lines in 1914, the average earnings were \$124.76 per car, and 13.1 cents per car-mile, these figures not showing any deduction on account of the absorption of icing charges. These earnings can hardly be deemed excessive for the transportation of a valuable and perishable product which moves almost invariably in refrigerator cars, in expedited trains, in only one direction, and during only part of the year. For the year 1914 the Pennsylvania Railroad's average revenue per loaded car-mile, on all traffic, was 16.3 cents. Even admitting that the former rating of one and one-half times first class was made with a view to including the cost of icing, which is not shown of record, it does not appear that the present carload rating was so made. On the contrary it is affirmatively shown that the present carload rates on shucked oysters are not unreasonable for the transportation service. Complainants show that the rates were recently increased 5 per cent. Those increases were small, however, in comparison with the reduction in charges which followed the establishment of the carload rating in 1912. The rate on shucked oysters, in carloads, from Baltimore to Chicago from 1904 to 1909 was \$1.005 per 100 pounds. From 1909 to 1912 the rate was \$1, while the present rate, including the 5 per cent increase, is 70.8 cents.

For icing less-than-carload shipments the tariffs under attack provide additional charges on a sliding scale, varying with the first-class rate, as follows:

When first-class rate, in cents per 100 pounds, is—	Charge, in cents per 100 pounds, for food refrigeration service.
50 and less	5
Over 50 and including 60	6
Over 60 and including 70	7
Over 70 and including 80	8
Over 80 and including 93	9
Over 93	10

There is practically no evidence of record in support of the present charges for the refrigeration of less-than-carload shipments, the defendants explaining in their brief that they failed to go into this question at greater length "for the reason that the movement in less-than-carload lots appears unimportant." On shipments weighing less than 10,000 pounds it has been customary for the shippers to bear the icing costs, except in a few instances where certain fast freight lines maintained an established service. The

defendants have not shown how the present charges compare with those paid by shippers prior to the filing of the tariffs now under consideration, nor has anything been said in justification of the sliding scale. The defendants are apparently entitled to a reasonable charge for the icing of less-than-carload shipments, when they perform that service, but we must find on the record that the propriety of the present charges has not been established.

There is also comparatively little evidence of record as to the reasonableness of the increased rates on shipments of oysters in the shell, which at the time of hearing were rated third class, any quantity. This rating has been changed. Since January 1, 1916, oysters in the shell are rated third class in carloads and second class in less than carloads. The complaint, however, was as to oysters in the shell in carloads. There is no evidence of record which would enable us to determine whether or not the present transportation rates are sufficiently high to warrant the absorption of the icing charges. The movement of oysters in the shell is relatively small, approximately 95 per cent of the oysters being shucked before shipment.

Upon consideration of the entire record we find and conclude that the defendants have established the reasonableness of the increased charges on shipments of shucked oysters, in carloads. We further find that the increased charges for the transportation of less-than-carload shipments of shucked oysters, and for the transportation of oysters in the shell in carloads, have not been shown to be reasonable.

It is alleged in one of the complaints that the increased rates are unjustly discriminatory, but no testimony was submitted in support of that allegation. It affirmatively appears that the icing charges are uniformly applied on shipments from all the points of production.

The complainants ask reparation. The freight charges, including the cost of icing, are usually paid by the consignees. The Oyster Growers and Dealers Association of North America, complainant, includes within its membership both consignors and consignees. A list of the members of the association, on whose behalf reparation is prayed, was attached to and made a part of the complaint. The defendants having failed to justify the increased charges upon less-than-carload shipments of shucked oysters, and upon carload shipments of oysters in the shell, it follows that such of the named members of the association as made such shipments under the increased charges and paid and bore the charges thereon are entitled to reparation, and we so find. The amount of reparation due can not be determined on the present record. Complainant's members who have made shipments of oysters and paid the rates found not to have been justified herein should prepare a statement

showing as to each shipment on which reparation is claimed the date of movement, point of origin, route, final destination, weight, rate applied, charges collected, and the amount of reparation due under our findings herein, together with proof that they bore the charges, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendant we will consider the entry of an order awarding reparation.

Appropriate order will be entered.

No. 8137.

WYETH HARDWARE & MANUFACTURING COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted February 19, 1916. Decided May 29, 1916. -

Rates for the transportation of harness and saddlery, boxed, from St. Joseph, Mo., to the Atlantic and Gulf ports, for export, not shown to have been unreasonable or unjustly discriminatory.

H. G. Krake for complainant.

R. C. Fyfe for lines in western classification territory.

H. D. Palmer for lines in official classification territory.

William Burger for lines in southern classification territory.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

Complainant, a corporation engaged in the manufacture and sale of harness and saddlery at St. Joseph, Mo., attacks as unreasonable and unjustly discriminatory the rates for the transportation of those commodities, boxed, from St. Joseph to the Atlantic and Gulf ports, for export. It seeks the establishment of commodity rates for this traffic in carloads, subject to a minimum weight of 30,000 pounds, and as a measure of such rates suggests the prevailing third-class basis. Rates are stated in cents per 100 pounds.

Since the first issue of the several classifications harness and saddlery, with few exceptions, have moved under any-quantity rates.
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Under the official and western classifications the established rating is first class; under the southern classification, second class. No commodity carload rates are in effect east of the Mississippi River, and for application west of that river such rates are published only in isolated cases. There is little, if any, domestic movement of harness and saddlery in carloads. Although complainant has shipped those commodities for export during the last 12 or 15 years, it did not ship them in carload lots prior to October, 1914. At that time and for a limited period thereafter complainant was engaged in executing certain orders which were secured by reason of the exceptional demand from European countries for supplies of this character. Twenty carloads, having an average weight of approximately 45,000 pounds, were shipped by complainant to New York for export during the period October, 1914-May, 1915. One car was shipped to that port at a later date, making 21 cars upon which reparation is asked. When this carload movement first developed a representative of complainant requested the carriers to establish commodity rates from St. Joseph to the Atlantic and Gulf ports for export, subject to a minimum weight of 30,000 pounds. Upon their ultimate refusal to publish such rates this complaint was filed.

Complainant charges that the existing rates were and are unreasonable as applied to carload traffic for export because of the fact that 20 carloads or more have been tendered for shipment. This, it urges, has resulted in increased utilization of car space and reduction in risk, station expense, and the use of cars. Allegations of unjust discrimination are predicated upon the fact that harness and saddlery are sold in competition with similar products of other manufacturers located at points on and east of the Mississippi River, from which rates to the ports are lower in amount and in relative adjustment than from St. Joseph; that carload rates are in effect from points in Iowa and on the Missouri River to the Mississippi River which are used in making rates to the Atlantic seaboard and are lower than those applicable from St. Joseph; and that carload rates are maintained for some movements in western classification territory, subject to a minimum weight of 20,000 pounds. No complaint is made of the rates from St. Joseph to the seaboard as applied to domestic traffic. These are any-quantity class rates and are the same as those in effect for export. Nor is any complaint made of the classification ratings on these commodities for the reason that their domestic movement in carloads is not general.

As evidence of unreasonableness complainant offered a number of exhibits which may be briefly summarized. Rates are shown applicable to export shipments of harness and saddlery from St. Joseph and competing centers of production, namely, Chicago, Ill., South

Bend, Ind., St. Louis, Mo., Louisville, Ky., Cincinnati, Ohio, Chattanooga, Tenn., and Buffalo, N. Y., to New York, Savannah, Ga., and New Orleans, La. These rates are all on the class basis under any-quantity rating. As shown by complainant, the rates to New York yield earnings in mills per ton-mile as follows: From St. Joseph, 21 mills; from Chicago, 16.2 mills; from South Bend, 17.8 mills; from St. Louis, 17.3 mills; from Louisville, 18 mills; from Cincinnati, 18.2 mills; from Buffalo, 20.1 mills. Complainant also shows the defendants' earnings in mills per ton-mile and cents per car-mile on the traffic shipped for export since October, 1914, which are compared with similar earnings on all traffic carried by lines forming through routes from St. Joseph to the various ports. A list was filed in evidence of articles taking first-class or higher rates, less than carload, which have been accorded carload ratings of third class or lower, subject to a minimum of 30,000 pounds or less.

Complainant cites carload commodity rates on harness and saddlery applying from Des Moines, Council Bluffs, Iowa, and Omaha, Nebr., to west bank Mississippi River crossings; from interior Iowa points to Missouri River points; from Winona, Minn., to St. Paul and Duluth, Minn., and certain Wisconsin points; from Dallas and Fort Worth, Tex., to points in Colorado; and from Chicago, Mississippi River points, and Missouri River points to stations on the Oregon Short Line in Wyoming, Idaho, Oregon, and Montana. These rates so far as they apply from points in Iowa and Minnesota are controlled or influenced by requirements of the authorities of those states. It was not shown that any of these commodity rates had operated to complainant's prejudice in the matter of the export shipments. Active competition for this business was met with manufacturers located at Hartford, Conn., Chattanooga, Louisville, St. Louis, South Bend, and Cincinnati. From all of these points, except Chattanooga, harness and saddlery move for domestic distribution or for export upon first-class any-quantity rates.

Complainant's disadvantage in meeting this competition appears to have been in its location. The leather used in its manufacture of harness and saddlery is drawn mainly from Buffalo, N. Y., in part from Kenosha, Wis., while the hardware so used is received from Newark, N. J., and Cleveland, Ohio. Counsel for complainant directs our attention particularly to testimony given by one of complainant's officers. The frank statement of complainant's disadvantage found in this evidence, as well as the emphasis placed upon it by counsel, warrants its quotation:

Well, our main trouble, of course, is the fact that we have to buy our goods largely in the east, our materials, and pay the local freight rates largely for them, and then pay the freight rate back east for anything we may sell there to
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be delivered in New York. The general impression is that there is a large profit in war contracts. They have used that word a great deal here to-day. That may be true in almost any business except the saddlery business. The harness and saddlery business has been a prosperous business for a great many years. * * * For the last 10 years it has been on a decline, and a great many houses are in a condition where they are running about one-fourth of their capacity. Consequently, where there is an opportunity to bid on any attractive order, instead of the purchaser having to look for some one that can deliver that promptly, there are 30 or 40 factory managers there trying to get that order, and of course we can not all have it, so that we feel the competition is very strong and keen.

The Commission has repeatedly held that it has no authority to remove by rate readjustments the disabilities of location.

Defendants' evidence was offered by representatives of the official and western classification committees. It is unnecessary to refer to this evidence in detail, for we are of the opinion that complainant has not shown the rates under attack to be unreasonable or unjustly discriminatory. It has been shown that saddlery and harness have moved for a long period of years, with few exceptions, on any-quantity class rates. The propriety of this basis is not questioned in its application to domestic shipments, nor is there evidence that it would have been brought into issue with regard to export trade but for shipments resulting from the exceptional demand in Europe for harness and saddlery. The fact that carloads are offered for shipment does not prove the unreasonableness of any-quantity rates, for there are a number of commodities, such as cotton piece goods and boots and shoes, which move under any-quantity rates in carload quantities. It is not shown or predicted that when normal business conditions have been restored harness and saddlery will move in carload lots. Although complainant has made efforts to extend its trade to South America, it does not appear that such trade has yet so developed as to become a factor in the construction of export rates.

The issue of unjust discrimination is free from doubt. Rates from the cities where complainant's chief competitors for export traffic are located are on the same basis as those in effect from St. Joseph. The fact that lower rates are applicable from those cities is due to their location nearer the ports. The relative adjustment disclosed by a comparison of earnings in mills per ton-mile is the established relation of first-class rates which are not open to serious question in a case of this character.

We find that the rates under attack are not shown to be unreasonable or unjustly discriminatory, and accordingly an order will be entered dismissing the complaint.

No. 8074.
SWIFT & COMPANY
v.
MOBILE & OHIO RAILROAD COMPANY ET AL.

Submitted January 14, 1916. Decided May 19, 1916.

Certain shipments of packing-house products and fresh meats in mixed carloads from North Fort Worth, Tex., and East St. Louis, Ill., to Columbus, Ga., were stopped at Montgomery, Ala., for partial unloading and charges were collected on the basis of the carload rates to Montgomery plus the less-than-carload rates beyond. No stoppage in transit arrangement was then in effect; *Held*, following previous decisions, that in the absence of unjust discrimination transit arrangements will not be given retroactive effect. Complaint dismissed.

R. D. Rynder for complainant.
No appearance for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainant is a corporation engaged in the meat-packing business at North Fort Worth, Tex., East St. Louis, Ill., and elsewhere. By complaint, filed June 10, 1915, it alleges that the rates charged by defendants for the transportation of 18 carloads of fresh meat and packing-house products shipped from North Fort Worth and East St. Louis to Columbus, Ga., between October 29, 1910, and May 13, 1911, and stopped at Montgomery, Ala., for partial unloading, were unreasonable and unjustly discriminatory to the extent that they exceeded the carload rates contemporaneously applicable from and to the points involved plus \$5 per car for stoppage in transit. Reparation is asked. The claims were presented to the Commission informally within two years after the causes of action accrued.

Fifteen cars originated at North Fort Worth; three at East St. Louis. All were consigned to Columbus, and pursuant to complainant's instructions were stopped at Montgomery and partially unloaded, the remainders of the shipments being moved on to Columbus by way of the Seaboard Air Line Railway. Nine of the shipments from North Fort Worth moved to Montgomery by way of the Texas & Pacific Railway, the Vicksburg, Shreveport & Pacific Railway, the Alabama & Vicksburg Railway, the Alabama Great Southern Railroad, and the Mobile & Ohio Railroad. Six moved by way of the St. Louis, San Francisco & Texas Railway, the Chicago, Rock Island &

Pacific Railway, the St. Louis & San Francisco Railroad, and the Mobile & Ohio Railroad. The three shipments from East St. Louis moved to Montgomery by way of the Mobile & Ohio Railroad. Charges were assessed for the transportation to Montgomery at the carload rates from North Fort Worth or East St. Louis to Montgomery and for the transportation beyond Montgomery at the less-than-carload rates in effect from Montgomery to Columbus on the weight remaining in the cars. Effective November 18, 1911, after the shipments had moved, defendants filed tariffs providing for the stoppage at Montgomery of shipments in transit from and to the points involved.

Effective February 1, 1910, prior to the movement of the shipments, the southern classification provided as follows:

On shipments of fresh meat and packing-house products, carloads, in transit from or via St. Louis, Mo., East St. Louis, Tamms, and Cairo, Ill., and Columbus, Ky., to points on the Mobile & Ohio Railroad one stop for partial unloading at an intermediate point short of final destination will be permitted under the following conditions:

First. Charge will be based on the rate for the entire contents of the car from shipping point to final destination or to the intermediate stop-over point whichever is the highest.

Second. Charge of \$5 per car will be made for the stop-over in addition to the freight charges on the shipment.

This provision was not applicable on shipments moving through the lower Mississippi River crossings or on shipments destined to points beyond the Mobile & Ohio Railroad. It was amended at different times at complainant's request, but the exact transit arrangement desired was not authorized until the present rule became effective November 18, 1911.

Complainant does not challenge the reasonableness of the carload rates charged to Montgomery or the less-than-carload rates beyond, but contends that it was unreasonable and unjustly discriminatory for defendants not to have provided stoppage in transit at Montgomery for partial unloading at an additional charge of \$5 per car and that the rules in effect prior to November 18, 1911, were unreasonably restricted and therefore caused the exaction of unreasonable and unjustly discriminatory charges for the services performed.

Defendants were not represented at the hearing, but an application was filed by certain of them on the special docket for authority to make reparation to complainant on the basis now sought.

The facts disclosed afford no basis for a departure from our general rule that transit arrangements will not be applied retroactively except to remedy unjust discrimination, and the complaint will be dismissed.

HARLAN, *Commissioner*, concurring:

Without approving the present practice of the defendant as described in the foregoing report, I concur in the denial of the relief prayed for by the complainant.

No. 7101.
**TRAFFIC BUREAU OF THE SIOUX CITY COMMERCIAL
CLUB**

v.
AMERICAN EXPRESS COMPANY ET AL.

Submitted November 20, 1915. Decided May 23, 1916.

1. Rates for transportation by express between Sioux City, Iowa, and points in the state of South Dakota not shown to be unreasonable.
2. The present relation of rates for transportation by express between Sioux City, Iowa, and points in the state of South Dakota, and between the same South Dakota points and Sioux Falls, Mitchell, Aberdeen, Watertown, and Yankton, S. Dak., gives an undue preference to Sioux Falls, Mitchell, Aberdeen, Watertown, and Yankton and results in undue and unreasonable prejudice and disadvantage to Sioux City. Defendants ordered to remove this unjust discrimination.

C. E. Childe for complainant.

T. B. Harrison and *C. O. Bailey* for American Express Company, defendant, and Adams Express Company, intervener.

Branch P. Kerfoot and *C. O. Bailey* for Wells Fargo & Company, defendant.

P. W. Dougherty for the state of South Dakota, intervener.

Oliver E. Sweet, *P. W. Dougherty*, and *D. L. Kelley* for *J. J. Murphy*, *W. G. Smith*, and *P. W. Dougherty*, constituting the Board of Railroad Commissioners of the State of South Dakota, intervener.

R. D. Springer for Sioux Falls Commercial Club of Sioux Falls, S. Dak., intervener.

T. J. Morgans for Mitchell Commercial Club of Mitchell, S. Dak., intervener.

A. J. Branscom for Aberdeen Commercial Club of Aberdeen, S. Dak., intervener.

REPORT OF THE COMMISSION.

MEYER, Chairman:

The complaint in this proceeding attacks as unreasonable and unduly and unreasonably prejudicial and disadvantageous to Sioux City the rates for transportation by express between Sioux City, Iowa, and points in the state of South Dakota. The allegations of undue prejudice and disadvantage are predicated upon comparisons with express rates applicable between Sioux Falls, S. Dak., and other South Dakota cities, on the one hand, and points in that state on the other. Complainant asks that an order be entered re-

quiring the defendants to publish and maintain express rates applicable between Sioux City and South Dakota points which are no higher than those contemporaneously maintained for substantially the same distances between South Dakota cities such as Sioux Falls and other points in that state.

The parties defendant are the American Express Company, which operates between Sioux City and points in South Dakota over the lines of the Chicago & North Western Railway Company and of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, and Wells Fargo & Company, which operates between Sioux City and South Dakota points over the Chicago, Milwaukee & St. Paul Railway Company, hereinafter referred to as the Milwaukee. By their answers these defendants deny that their interstate express rates here attacked are unreasonable *per se*, but admit that unjust discrimination is caused by the present relation of express rates between Sioux City and South Dakota points, on the one hand, and between points wholly within the state of South Dakota, on the other. For this unjust discrimination they disclaim responsibility, averring that the South Dakota intrastate express rates in their inception were published and are now maintained under the requirements of an order of the Board of Railroad Commissioners of South Dakota. The defendants further allege that these intrastate express rates yield less revenue than the cost of the service rendered and therefore place an unjust burden upon interstate express traffic; that they give an unreasonable and undue preference and advantage to South Dakota shippers and cause a corresponding prejudice and disadvantage to interstate shippers on shipments generally from and to points in that state to and from points in Iowa and other states. They ask that an order be entered requiring the removal of this unjust discrimination by applying to express shipments moving between all points in South Dakota the rates found reasonable by this Commission in *In re Express Rates, Practices, Accounts, and Revenues*, 24 I. C. C., 381; 28 I. C. C., 131; 35 I. C. C., 3, hereinafter referred to as the *Express Investigation*. Thus the defendants seek to broaden the issues and bring before us for review the relation of rates on other movements than those involved in the complaint.

INTERVENTIONS.

The Adams Express Company, the Chicago & North Western Railway Company, commercial clubs of Sioux Falls, Mitchell, and Aberdeen, S. Dak., hereinafter referred to as the South Dakota cities, the state of South Dakota, and the Board of Railroad Commissioners of the State of South Dakota, hereinafter referred to as the state commission, are parties by intervention. The Adams Ex-

press Company is engaged in transportation by express between points wholly within the state of South Dakota and also between points located in that state and in adjacent states. While this company serves Sioux City, it reaches only a few stations on the line of the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the Burlington, in the extreme southwestern section of South Dakota. Its position with reference to the issues is in substance the same as that of the defendants. The Chicago & North Western Railway Company filed several exhibits consisting chiefly of comparisons between the South Dakota intrastate express rates and freight rates for the same movements, supplemented by similar comparisons for movements in other states. The South Dakota cities and the state commission oppose the contentions of complainant and defendants, although upon somewhat different theories.

RATE HISTORY.

Prior to September, 1911, the express rates applicable to South Dakota intrastate traffic were not uniform. In general the level of these rates was substantially the same as applied between Sioux City and South Dakota points, although in some instances they were higher than the interstate express rates for equal distances. On September 1, 1911, the present South Dakota intrastate express rates became effective. The circumstances leading to their adoption are the subject of a statement at length in the brief of the state commission, which is quoted in part in the footnote.¹ The ex-

¹ A brief review of the history of express rate regulation in so far as the same may have a bearing on the issues in this case seems pertinent. Prior to the year 1909 there had been no effort at public regulation of express rates into or within the state of South Dakota. At the session of the legislature of the state of South Dakota of that year an act was passed, being chapter 159 of the Laws of 1909, which provided among other things as follows:

"3. On or before July 1, each express company doing business in this state shall file with the board of railroad commissioners a complete schedule of its classifications of property, and the rates charged for the transportation of money or other property within this state, by such company, and its joint rates with other companies as the same were in force on the 1st day of January, 1909, and shall on or before July 1, 1909, have prepared and put in operation a new schedule of rates as established herein.

"4. No express company shall charge or receive for the transportation of merchandise, money or other property, wholly within the state of South Dakota, any sum exceeding 80 per cent of the rate as shown in the schedule of January 1, 1909, provided for in section 3 of this act, until after the board of railroad commissioners has provided a different rate; provided, that nothing in this act shall be construed to change any special rate in force for the transportation of cream, milk or poultry, or to reduce any charge below 15 cents.

"5. After the rates herein provided for have been made, readjusted and published and after they have been put in force and effect, any express company may apply to the board of railroad commissioners for an order to change and modify such schedule of rates, in which case the board of railroad commissioners shall call a hearing for the purpose of determining the justice of such rate."

* * * * *

On the failure of the express companies to file a schedule in accordance with this act, the board of railroad commissioners prepared and sought to enforce a schedule of

press class rates applicable between Sioux City and South Dakota points are those prescribed by the Commission in *Express Investigation, supra*, effective February 1, 1914, as increased following our order on rehearing in the same case, 35 I. C. C., 3. Reference is made to our original report in that case for a statement of the investigation made by the Commission and the considerations leading to the establishment of the interstate express schedules.

LOCATION OF SIOUX CITY WITH REFERENCE TO SOUTH DAKOTA TRAFFIC.

The city limits of Sioux City extend to the Big Sioux River at the southeastern corner of South Dakota, that river forming part of the boundary line between South Dakota and Iowa. The southeastern section of South Dakota is thus a natural and important trade territory for Sioux City shippers whose principal competitors

rates and classifications complying with the provisions of the law. Thereafter the express companies instituted a suit in the federal court and were successful in restraining the enforcement of this schedule of express rates, the court basing its decision upon the ground that chapter 159 of the Laws of 1909 did not confer upon the board of railroad commissioners any authority to make a schedule of express rates.

A further complication of the situation grew out of the fact that on the lines of the Chicago, Milwaukee & St. Paul Railway Company in the state of South Dakota at this time, but slightly after the effective date of the law of 1909, the Wells Fargo & Company Express superseded the United States Express Company, and it was the position of the Wells Fargo & Company Express that the law of 1909 did not apply to it, because it had no schedule of rates in effect on January 1, 1909.

An effort was made by the Board of Railroad Commissioners of South Dakota to induce all of the express companies, and the Wells Fargo & Company Express especially, to adopt the 1900 schedule that had been proposed by the board, but in these efforts they were unsuccessful.

That there was need of a more equitable schedule of express rates in the state of South Dakota at the time of the enactment of the law of 1909 is amply demonstrated by the facts disclosed in the record in this state (case?). Mr. E. E. Bush, testifying on behalf of the defendant express company, stated on cross-examination that there were as many mileage scales and systems of express rates in effect in South Dakota prior to July 1, 1909, as there were lines of railroad within the state.

In the light of subsequent events, it now clearly appears that the express companies were unwise to resist the scale of rates prepared for them by the South Dakota commission in 1909.

The action of the Wells Fargo & Company in denying that the law of 1909 had any application to its affairs was only one of the offenses chargeable to that company. Not only did it refuse to comply with the 1900 schedule, but upon superseding the United States Express Company it published a schedule of express rates applying intrastate which actually effected an increase of approximately 5 per cent in the rates that had formerly been charged by the United States Express Company.

When the legislature of the state of South Dakota convened in the year 1911, a second act intended to regulate charges for transportation of property by express was passed. This law, being chapter 152 of the Laws of 1911, * * *. The provisions of the statute in question are (in part) as follows:

"Sec. 1. That the Board of Railroad Commissioners of the State of South Dakota shall, within 60 days after this act goes into effect, prepare for each of the express

within the state are located at Sioux Falls, Mitchell, Aberdeen, and Watertown. Competition with dealers located at Yankton in the sale of ice cream is also shown.

RATE COMPARISONS.

Complainant has compared the first-class express rates from Sioux City and Sioux Falls to all stations in South Dakota served by the defendant companies. In the following table are stated certain of these comparisons to points of representative distance from Sioux City. The columns of this table show the distances, first-class express rates, and first-class freight rates from Sioux City, the South Dakota intrastate first-class express rates for distances equal to those from Sioux City, together with the distances, first-class express rates, and first-class freight rates from Sioux Falls to the

companies doing business in this state at this time or at any other time hereafter, a uniform schedule or schedules of reasonable, maximum rates of charges for the transportation of express freight between stations within this state over lines of railway wholly within this state, which rates shall not exceed seventy (70) per cent of the lowest rates which were in force for the transportation of express freight over any lines of railway between stations within this state on the 1st day of January, 1909."

* * * * *

The legislature, at the time of enacting the law of 1911, was of course well aware of the fate of the law of 1909 and was perfectly familiar with the course of obstruction and with the policy of rate increases which the express companies had followed in the interim between the legislative session of 1909 and that of 1911, so that it may, perhaps be said in fairness to all parties concerned that the requirement in the law of 1909 for a 30 per cent reduction below the lowest rate in effect January 1, 1909, was in some sense, at least, a retaliatory measure. This does not mean, however, that the schedule of express rates thereafter proposed in compliance with the law was not given careful consideration before its adoption by the board of railroad commissioners.

On the 2d day of May, 1911, the board of railroad commissioners, pursuant to the mandate contained in the act of 1911, entered its order specifying a maximum schedule of express rates applicable to express business between points within the state of South Dakota. This schedule was later adopted and published by all the express companies doing business within this state. * * *

However, this schedule was not accepted by the express companies without a resort to litigation. As soon as the board's order proposing the schedule had been adopted, a temporary restraining order against the enforcement of this schedule was issued out of the federal court. Thereafter a hearing was had upon the application of the express companies for a restraining order pending the trial of their case, and * * * the application * * * was denied on the ground that the express companies had failed to show to the satisfaction of the court that the South Dakota railroad commission's schedule of express rates was noncompensatory or confiscatory. The order of the federal court was entered on the 21st day of September, 1911, and thereupon the state railroad commission's schedule became effective on intrastate express business in South Dakota and has remained in effect ever since that time.

The case in federal court which was commenced in May, 1911, and which involves the question of the reasonableness of the South Dakota commission's schedule, is still pending and has never been tried.

* * * * *

The express companies have never appealed to the Board of Railroad Commissioners of the State of South Dakota for any adjustment of the express schedules of which they are complaining in this case.

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same stations. Rates are stated throughout this report, unless otherwise specified, in cents per 100 pounds:

To—	From Sioux City.			South Dakota first-class express rates. ¹	From Sioux Falls.		
	Miles.	First-class express rates.	First-class freight rates.		Miles.	First-class express rates.	First-class freight rates.
Jefferson.....	12.3	70	16	30	79	35	22.5
Elk Point.....	20.7	70	17	30	70.6	35	21.7
Burbank.....	29.3	70	22.5	30	79.2	35	33.3
Meckling.....	43.4	90	27	30	93.3	35	36
Alcester.....	49.4	90	28	35	107	35	38.7
Beresford.....	58.2	90	30	35	98.2	35	38.9
Hooker.....	74.8	90	33	35	81.6	35	39.6
Avon.....	99.8	140	38.5	35	110.9	40	40.5
Armour.....	122.8	140	44	40	120.8	40	42.3
Platte.....	149.7	140	47.5	50	160.8	55	49.5
Pukwana.....	195.2	160	50	70	158.5	55	47.7
Ashton.....	232.7	180	63.5	90	168.1	55	49.5
Aberdeen.....	265.3	200	66	100	182.3	65	53.1
Pierro.....	303.6	200	70	110	222.4	85	60.3
Interior.....	350.9	200	110	135	314.2	120	102
Wall.....	402.8	245	112	155	335.6	125	106.5
Black Hawk.....	454.2	260	122	190	400	145	122
Terry.....	501.5	260	129	230	448.2	175	129

¹ For distances in South Dakota equal to those shown from Sioux City.

From this table it appears that the distances to Armour from Sioux City, 122.8 miles, and from Sioux Falls, 120.8 miles, are substantially the same. The first-class express rate from Sioux City is \$1.40; from Sioux Falls, 40 cents; while the first-class freight rate from Sioux City is 44 cents and from Sioux Falls is 42.3 cents. Here is to be observed one of the incidents of the South Dakota express rates to which attention is frequently directed in the evidence of complainant and defendants—that in many instances they are lower than the first-class freight rates for the same distances. The exhibit from which the foregoing table was taken sets forth rates to 288 stations, to 67 of which the first-class express rates from Sioux Falls are lower than the first-class freight rates. In some instances they are appreciably lower. To the larger number of stations the first-class express rates are higher, although in numerous instances the margin of difference is small.

Defendants have compared the South Dakota first-class express rates with a mileage scale of first-class freight rates in effect in that state on the line of the Burlington. From this comparison it appears that the first-class freight rates are lower than the first-class express rates for distances of 50 miles or less, but are substantially higher for distances of 55 miles or more. Emphasizing the fact that these comparisons embrace only the first-class freight rates, the state commission makes a similar comparison which includes freight rates for the first four classes, effective in South

Dakota on the line of the Milwaukee. This comparison is shown in the following table:

Miles.	South Dakota first-class express rates.	Freight rates.			
		First class.	Second class.	Third class.	Fourth class.
10.....	30	13.5	11.7	9.4	7.2
20.....	30	18.0	15.3	12.1	9.0
30.....	30	22.5	18.9	14.8	11.2
40.....	30	26.1	21.6	17.5	13.0
50.....	35	27.9	23.4	18.4	13.9
60.....	35	29.7	25.2	19.3	14.8
70.....	35	31.5	26.1	20.7	15.7
80.....	35	33.3	27.9	22.3	16.6
90.....	35	35.1	29.7	22.5	17.5
100.....	35	36.9	30.6	24.3	18.4
120.....	40	40.5	34.2	26.5	20.2
140.....	45	44.1	36.9	29.7	22.0
160.....	55	47.7	39.6	32.4	23.8
180.....	60	51.3	43.2	34.2	25.6
200.....	70	54.9	45.9	36.9	27.4
220.....	75	57.6	48.6	38.7	28.8
240.....	90	60.3	50.4	40.5	30.1
260.....	95	63.0	53.1	42.3	31.5
280.....	100	65.7	54.9	44.1	32.8
300.....	110	68.4	57.6	45.9	34.2
320.....	120	71.1	59.4	47.7	35.5
340.....	125	73.8	62.1	49.5	36.9
360.....	135	76.5	63.9	51.3	38.2
380.....	140	79.2	66.6	53.1	39.6
400.....	145	81.9	68.4	54.9	40.9
Total.....	1,735	1,210.5	1,015.2	809.0	604.8

The aggregate express rates here shown are 143.3 per cent of the aggregate first-class freight rates, 170.9 per cent of the aggregate second-class freight rates, 214.4 per cent of the aggregate third-class freight rates, 286.8 per cent of the aggregate fourth-class freight rates. The amounts of these percentages are obviously increased by the inclusion of comparisons for the longer distances. For distances 30 to 80 miles the first-class express rates exceed the first-class freight rates by less than 10 cents. The difference for most mileage groups within that range is materially less, while for distances 90 to 120 miles the express rates are lower than the first-class freight rates. It was testified by the rate expert of the state commission that a fair average express haul in this general territory would be approximately 100 miles. The average distance of intrastate shipments carried by the American Express Company for the five months, October, 1911-February, 1912, was 72.2 miles.

While acknowledging that some express rates from Sioux City to South Dakota points are higher than the intrastate rates for equal distances, the state commission asserts that some intrastate express rates are higher than the corresponding interstate rates. The inference drawn from this is that for such rate differences as exist the state schedules are not wholly responsible. Evidence in support of this position deals with (1) interstate and intrastate charges on packages weighing from 4 to 30 pounds for distances 20 to 150 miles; 39 I. C. C.

(2) comparisons of the interstate and intrastate scales of graduated charges as shown in charges for packages weighing less than 100 pounds. This evidence will be briefly reviewed.

The state commission questions the fairness of complainant's comparisons of interstate and intrastate rates applicable to the transportation of 100-pound weights. It points to defendants' evidence which shows that the average weight per transaction on all South Dakota intrastate express shipments carried by the Adams Express Company for the months of October, November, and December, 1911, and by Wells Fargo & Company in April, 1914, taken together, was 97.9 pounds; that the average weight of all interstate express shipments delivered to and carried from South Dakota points by Wells Fargo & Company in October, 1913, was 59.3 pounds and in April, 1914, 26.7 pounds, the average weight per transaction being 34.9 pounds. It shows by its own evidence that the average weight per transaction of all express shipments carried by the American Express Company from Sioux City to South Dakota during the months of July and August in 1911, 1912, 1913, and 1914 was 44 pounds; that the average weight of merchandise shipments by express from Sioux City to South Dakota points for the months of July and August, 1914, was 25.5 pounds.

Related to these figures is an exhibit prepared by the state commission which compares interstate and intrastate charges for packages weighing from 4 to 30 pounds. These are shown for representative distances in the following table, which compares first-class express charges from Sioux City to certain points in South Dakota, effective February 1, 1914, with those prevailing for the same weights and distances under the South Dakota scale. To this we have also added, as a matter of further information, the charges from Sioux City, effective prior to February 1, 1914, and those which became effective September 1, 1915:

From Sioux City to—	Charges on—							
	4 pounds.	6 pounds.	8 pounds.	12 pounds.	16 pounds.	20 pounds.	24 pounds.	30 pounds.
Elk Point (20.7 miles):								
Effective prior to Feb. 1, 1914.....	25	30	30	30	30	30	35	40
Effective Feb. 1, 1914.....	22	23	24	26	28	30	32	36
Effective Sept. 1, 1915.....	27	28	29	30	32	34	36	38
Under South Dakota scale.....	25	30	30	30	30	30	30	30
Vermillion (35 miles):								
Effective prior to Feb. 1, 1914.....	25	30	30	30	30	30	35	40
Effective Feb. 1, 1914.....	23	24	26	28	31	34	37	41
Effective Sept. 1, 1915.....	28	29	30	32	35	38	41	44
Under South Dakota scale.....	25	30	30	30	30	30	30	30
Gayville (50 miles):								
Effective prior to Feb. 1, 1914.....	30	35	35	35	35	35	40	45
Effective Feb. 1, 1914.....	23	24	26	28	31	34	37	41
Effective Sept. 1, 1915.....	28	29	30	32	35	38	41	44
Under South Dakota scale.....	25	30	30	30	30	30	35	38

From Sioux City to—	Charges on—							
	4 pounds.	6 pounds.	12 pounds.	16 pounds.	20 pounds.	24 pounds.	30 pounds.	
Yankton (61.2 miles):								
Effective prior to Feb. 1, 1914	30	35	40	40	40	45	50	
Effective Feb. 1, 1914	23	24	26	28	31	34	41	
Effective Sept. 1, 1915	28	29	30	33	35	38	44	
Under South Dakota scale	25	30	30	30	30	35	35	
Centerville (71 miles):								
Effective prior to Feb. 1, 1914	35	40	45	45	50	55	60	
Effective Feb. 1, 1914	23	24	26	28	31	34	41	
Effective Sept. 1, 1915	28	29	30	33	35	38	44	
Under South Dakota scale	25	30	30	30	30	35	35	
Scotland (89 miles):								
Effective prior to Feb. 1, 1914	35	40	45	45	50	55	60	
Effective Feb. 1, 1914	24	26	28	31	35	39	43	
Effective Sept. 1, 1915	29	30	32	36	39	43	52	
Under South Dakota scale	25	30	30	30	30	35	35	
Springfield (101 miles):								
Effective prior to Feb. 1, 1914	35	40	45	45	50	55	60	
Effective Feb. 1, 1914	24	26	28	31	35	39	43	
Effective Sept. 1, 1915	29	30	32	36	39	43	52	
Under South Dakota scale	25	30	30	30	30	35	35	
Platte (150 miles):								
Effective prior to Feb. 1, 1914	35	45	50	55	60	65	70	
Effective Feb. 1, 1914	25	27	30	34	39	44	56	
Effective Sept. 1, 1915	30	32	34	39	43	48	59	
Under South Dakota scale	25	30	30	30	30	35	40	

From this data it appears that, although the interstate charges from Sioux City were in some instances less than the South Dakota charges for equal distances prior to September 1, 1915, these differences have been largely removed by the increases in interstate charges which became effective on that date.

It is also urged by the state commission that a comparison of the intrastate scale of graduated charges with interstate charges for packages of equal weight will show many charges from Sioux City which are lower than those which apply between points in South Dakota. The charges under the intrastate and interstate schedules for packages weighing less than 100 pounds have been shown. For that purpose intrastate and interstate rates of 50 cents, 60 cents, 75 cents, 90 cents, \$1, \$1.25, \$1.50, \$1.75, \$2.25, and \$2.75 for transportation of 100-pound packages are used in the state commission's exhibit.

It appears, however, that the lowest first-class express rate for 100-pound packages in effect between Sioux City and points in South Dakota is 70 cents. The other published interstate first-class express rates per 100 pounds applicable in that territory are 90 cents, \$1.15, \$1.40, \$1.60, \$1.80, \$2, \$2.25, \$2.45, \$2.60, and \$2.80. We therefore show in the following table the state commission's comparisons with reference only to the first-class rates of 90 cents and \$2.25. The interstate graduated charges as offered in evidence are those

which became effective on February 1, 1914. To these have been added the interstate charges effective September 1, 1915:

Pounds.	Interstate first-class express charges Sioux City to South Dakota points under first-class rate of 90 cents per 100 pounds effective—		Graduated charges under South Dakota intrastate scale.	Interstate first-class express charges Sioux City to South Dakota points under first-class rate of \$2.25 per 100 pounds effective—		Graduated charges under South Dakota intrastate scale.
	Feb. 1, 1914.	Sept. 1, 1915.		Feb. 1, 1914.	Sept. 1, 1915.	
1.....	21	26	25	23	27	26
5.....	23	28	40	30	35	69
10.....	27	31	45	40	45	75
15.....	30	35	45	51	55	85
20.....	34	38	50	61	65	100
30.....	41	44	60	81	85	113
40.....	48	51	70	102	105	113
50.....	55	57	75	122	125	113
60.....	62	64	85	143	145	135
70.....	69	70	90	163	165	157
80.....	76	77	90	184	185	180
90.....	83	83	90	204	205	202
100.....	90	90	90	225	225	225

This form of comparison the defendants criticize as misleading in that it contrasts the scales of graduated charges under the same 100-pound rates and leaves out of consideration the important factor of distance. They urge, in substance, that inasmuch as the same rate under the two rate structures will carry 100 pounds different distances, it would be more accurate to compare the graduated charges under rates which will carry 100 pounds the same distances. There is apparently some confusion of thought with reference to the proper basis for comparing the graduated charges under the express rate structures here considered. There are three basic factors—the weight of the package, the distance from shipping point to destination, and the rate or charge for carrying the given weight the given distance. The weight taken as a standard for fixing rates is 100 pounds. Assuming for illustration that the distance is 122 miles, which is approximately the distance from both Sioux City and Sioux Falls to Armour, the charge paid by the interstate shipper for the transportation of 100 pounds by express is \$1.40, by the state shipper, 40 cents. Suppose each shipper desires to ship by express to the same destination packages weighing less than 100 pounds. On such packages the following charges, in cents, would apply, the first stated in each instance from Sioux City, the second from Sioux Falls: 1 pound, 26, 25; 5 pounds, 31, 25; 10 pounds, 36, 30; 20 pounds, 48, 30; 30 pounds, 59, 35; 40 pounds, 71, 40; 50 pounds, 82, 40; 60 pounds, 94, 40; 70 pounds, 105, 40; 80 pounds, 117, 40; 90 pounds, 128, 40. Thus for the transportation of 100 pounds the Sioux City shipper's charges

are 350 per cent of the Sioux Falls shipper's; for 80 pounds, 292 per cent; for 60 pounds, 235 per cent; for 40 pounds, 177 per cent; for 20 pounds, 160 per cent; for 5 pounds, 124 per cent.

The substance of the matter is that the South Dakota scale of graduated charges lays a proportionately greater charge upon the lighter weights and correspondingly less upon the heavier. The real significance of the state commission's rate comparisons lies in their explanation of this fact. The relation of charges on lighter and heavier weights for the same distances was discussed in *Express Investigation*, *supra*, p. 427. We found that by their scales of graduated charges the express companies had placed an unwarranted burden upon shipments of light packages, and our revision of those scales in the new rates prescribed was intended to correct these inequalities. The present South Dakota scale of graduated charges is the same as that condemned by this Commission in its application to interstate transportation.

It has been clearly shown that in the matter of charges for transportation by express, shipments from Sioux City to points in South Dakota bear a materially heavier burden than shipments of like character for the same distances between points in that state. But notwithstanding the substantial differences between the interstate and intrastate express rates, the state commission earnestly contends that unjust discrimination has not been shown. We shall briefly review other evidence which relates to this issue.

CONTENTIONS AS TO THE ISSUE OF UNJUST DISCRIMINATION.

Complainant's witnesses testified in behalf of shippers of ice cream, fruit, vegetables, produce, and drugs. These are the lines of business chiefly affected by the relation of express rates, but it was stated that complaint of this adjustment has been made to complainant by packers, department stores, grocers, brewers, and shippers of seeds, nursery products, auto supplies, and hardware. The testimony shows that shippers by express from Sioux City are in active competition with shippers located at Sioux Falls and other points in South Dakota, such as Mitchell, Aberdeen, Watertown, and Yankton. Witnesses testified that since the intrastate rates became effective in 1911, the business of Sioux City shippers in South Dakota has decreased; that this fact is traceable to the relatively unequal adjustment of express rates; that they are compelled at times to equalize express charges or reduce prices in order to retain customers; that the rate inequalities have resulted in shipments from Sioux City by the less satisfactory freight service of articles which otherwise would be forwarded by express; that in

many instances shipments from Sioux City by freight must compete with express service open to South Dakota shippers at the same or relatively equal rates. These are the chief disadvantages referred to by complainant's witnesses as caused by the adjustment here in issue.

Complainant's evidence along these lines was offered at the first hearing of this case. The state commission asked for a further hearing, which was granted, and in the intervening time subjected complainant's evidence to a searching analysis. A check of shipments from Sioux City to South Dakota points during the months of July and August, 1911, 1912, 1913, and 1914, was made at the Sioux City offices of Wells Fargo & Company and of the American Express Company. In addition to the evidence thus derived the state commission offered considerable testimony intended to controvert the claim that Sioux City shippers are prejudiced by the relation of express rates here under consideration. Stated in brief form, the contentions of the state commission upon this issue are these: (1) That shipments from Sioux City to South Dakota by express have not decreased but have in fact increased since 1911; (2) that if the South Dakota trade of Sioux City in such commodities as commonly move by express has not grown to the satisfaction of her shippers, the true explanation is to be found, not in the relation of express rates, but in the increase of certain interstate express rates from Sioux City, effective February 1, 1914, and more especially in the development which has attended South Dakota industries.

The state commission offers the results of the check of express records at Sioux City to show that the figures given by some of complainant's witnesses are not in all respects accurate. An instance of this is in relation to shipments of ice cream. One witness, testifying in October, 1914, with reference to the intrastate rates which became effective in September, 1911, and to the business of his company in South Dakota, said:

Before the rates went in we sold between twenty and twenty-five thousand gallons of ice cream. Last year we sold less than five.

The check of Wells Fargo & Company's books, recorded in pounds and reduced to gallons at 20 pounds to the gallon, showed that his company shipped via that carrier to South Dakota in July and August, 1911, 915.4 gallons; in the same months of 1912, 1,464.2 gallons; of 1913, 1,772.6 gallons; of 1914, 1,248.1 gallons. Based on these figures the state commission estimates the annual shipments of this company to South Dakota points via Wells Fargo & Company for the four years mentioned as 5,492.7, 8,785.2, 10,635.9, and 7,488.9 gallons, respectively.

It was found that the waybills of the American Express Company did not separate consignors, but the total shipments of ice

cream from Sioux City to South Dakota points by all producers via lines of both express companies for the months of July and August in each of the same years were ascertained. These, stated in gallons, were 2,803.8, 3,299.6, 4,403.2, and 3,736.4, respectively. Alcester and Beresford were named by the same witness as stations at which his company has current accounts and his testimony, in effect, was that these accounts are smaller now than they formerly were. The check of express records shows that to these stations the total express shipments by all producers of ice cream, from Sioux City, were in 1911, 9,890 pounds; in 1912, 13,420 pounds; in 1913, 15,930 pounds; in 1914, 19,880 pounds. From this showing the state commission urges that other Sioux City shippers are more active than the company in behalf of which the testimony was offered. At the second hearing complainant's witness explained the apparent discrepancies between his testimony and the check made of express records by stating that he did not at any time refer to the year 1911, and that in the amount of business done 1911 was not representative of the years which preceded or followed the establishment of the South Dakota rates. He testified without contradiction that up to that year his company had 170 customers located at about 80 points in South Dakota, while in September, 1915, its books showed 9 customers at 9 stations. Evidence as to decrease of business to South Dakota in the case of another shipper was found to be substantiated by the records of the express companies. This related to shipments of fruits and vegetables, of which those records showed an increase, however, in shipments by all dealers from Sioux City. A decrease in interstate shipments of drugs is ascribed by complainant's evidence to the relation of interstate and intrastate express rates.

As further evidence that Sioux City business has not been injuriously affected by the relation of interstate and intrastate express rates, the state commission has submitted certain other data obtained by its check of records of the American Express Company and Wells Fargo & Company at Sioux City. This is reproduced in part in the following table in which are shown for the months of July and August in the years 1911, 1912, 1913, and 1914, the number of transactions, number of pieces, average weight per transaction, average weight per piece, average charge per transaction and per piece, on all shipments of merchandise, ice cream, printed matter, fruits and vegetables, bread, eggs, butter, and poultry, and packing-house products from Sioux City to South Dakota points.

	Transactions.	Pieces.	Average weight per transaction.	Average weight per piece.	Charges per—	
					Transaction.	Piece.
Merchandise:			<i>Pounds.</i>	<i>Pounds.</i>	<i>Cents.</i>	<i>Cents.</i>
1911.....	6,869	7,895	16.20	14.17	49	43
1912.....	9,181	10,588	18.42	15.97	53	46
1913.....	7,036	8,138	24.19	20.92	57	49
1914.....	7,048	9,390	25.56	20.81	48	39
Ice cream:						
1911.....	425	571	131.94	98.19	104	77
1912.....	493	677	133.88	97.50	97	71
1913.....	613	872	143.69	101.00	103	78
1914.....	540	757	138.38	98.69	91	65
Printed matter:						
1911.....	1,087	1,226	47.56	42.17	70	62
1912.....	1,078	1,189	44.33	40.19	61	56
1913.....	1,046	1,130	44.48	41.17	62	57
1914.....	828	895	45.22	41.83	67	62
Fruit and vegetables:						
1911.....	1,119	5,147	140.11	30.46	98	21
1912.....	1,085	5,977	174.78	31.73	112	20
1913.....	1,788	6,487	112.95	31.24	79	22
1914.....	1,408	6,060	116.19	28.19	102	26
Bread:						
1911.....	717	804	62.50	55.75	42	37
1912.....	607	659	60.06	55.38	40	37
1913.....	592	669	59.94	53.00	39	36
1914.....	576	616	57.50	53.75	43	41
Eggs, butter, and poultry:						
1911.....	74	106	60.38	42.19	61	42
1912.....	79	94	53.38	44.88	52	44
1913.....	120	129	45.63	42.50	42	39
1914.....	90	95	46.36	43.94	38	36
Packing-house products:						
1911.....	614	1,369	185.67	83.28	117	82
1912.....	901	2,035	175.71	77.79	111	49
1913.....	812	1,864	183.31	79.86	127	55
1914.....	776	1,860	153.86	77.02	131	66

From this table it appears that there were more shipments of merchandise and packing-house products in 1914 than in 1911, although fewer than in 1912; that there were more shipments of ice cream, fruits, and vegetables, and eggs, butter, and poultry in 1914 than in 1911, although fewer than in 1913, and that shipments of printed matter and bread steadily decreased from 1911 to 1914. As a whole, an increase in express business since 1911 is shown. In the year 1914, however, there were fewer shipments and less aggregate weight than in 1912 or 1913.

The state commission in argument suggests that the falling off of express business from Sioux City to South Dakota in 1914 was caused by increases in interstate rates following our order in *Express Investigation, supra*. We are referred to complainant's testimony that the disparity in the rate relationships was aggravated by the new schedules of interstate rates. The state commission has likewise compared these schedules with the rates which they replaced. This evidence we reproduce in part in the following table which shows express rates per 100 pounds from Sioux City to certain South Dakota points in effect prior to February 1, 1914, and those effective on that date. No point of destination is shown in the exhibit of the

state commission to which the distance exceeds that to Aberdeen, 265.3 miles:

From Sioux City to—	Miles.	Merchandise rates in effect Jan. 31, 1914.	First-class rate, effective Feb. 1, 1914.	Scale "N" rate in effect Jan. 31, 1914. ¹	Second-class rate, effective Feb. 1, 1914.
Elk Point.....	20.7	50	70	40	53
Vermillion.....	35.2	50	90	40	68
Gayville.....	49.6	60	90	50	68
Yankton.....	61.2	75	90	60	68
Harrisburg.....	81.9	75	90	60	68
Avon.....	99.8	90	140	75	105
Lake Andes.....	127.3	125	140	100	105
Platte.....	149.7	125	140	100	105
Worsey.....	191.3	150	180	120	135
Melleto.....	243.7	150	200	120	150
Aberdeen.....	265.3	175	200	140	150

¹ Scale "N" embraced rates on the so-called "general specials," comprising principally articles of food. Second-class rates are now applied.

It should not be inferred from such comparisons, however, that the express rates prescribed in the *Express Investigation*, *supra*, resulted uniformly in increased charges. Substantial reductions were made in the express schedules considered as a whole, see *Express Investigation*, 35 I. C. C., 3, 6, and particularly in the charges for packages weighing less than 100 pounds. In the following table are shown the charges in cents for packages of various weights less than 100 pounds, effective from Sioux City to points named in the foregoing table, prior to February 1, 1914, on that date, and the current charges which became effective September 1, 1915:

From Sioux City to—	5 pounds.	10 pounds.	15 pounds.	20 pounds.	25 pounds.	30 pounds.	35 pounds.	40 pounds.	45 pounds.	50 pounds.	60 pounds.	70 pounds.	80 pounds.	90 pounds.	100 pounds.
Elk Point (20.7 miles):															
Prior to Feb. 1, 1914.....	25	30	30	30	35	40	40	40	40	45	50	50	50	50	50
Feb. 1, 1914.....	22	25	27	30	32	35	37	40	42	45	50	55	60	65	70
Sept. 1, 1915.....	27	29	32	34	36	38	41	43	45	47	52	56	61	65	70
Gayville (49.6 miles):															
Prior to Feb. 1, 1914.....	30	35	35	35	40	45	45	50	50	55	60	60	60	60	60
Feb. 1, 1914.....	23	27	30	34	37	41	44	48	51	55	62	69	76	83	90
Sept. 1, 1915.....	28	31	35	38	41	44	48	51	54	57	64	70	77	83	90
Harrisburg (81.9 miles):															
Prior to Feb. 1, 1914.....	35	40	40	40	45	50	50	55	60	60	70	75	75	75	75
Feb. 1, 1914.....	23	27	30	34	37	41	44	48	51	55	62	69	76	83	90
Sept. 1, 1915.....	28	31	35	38	41	44	48	51	54	57	64	70	77	83	90
Avon (99.8 miles):															
Prior to Feb. 1, 1914.....	40	45	45	50	55	60	65	70	75	75	85	90	90	90	90
Feb. 1, 1914.....	26	32	38	44	50	56	62	68	74	80	92	104	116	128	140
Sept. 1, 1915.....	31	36	42	48	54	59	65	71	77	82	94	105	117	128	140
Platte (149.7 miles):															
Prior to Feb. 1, 1914.....	40	50	55	60	65	70	75	80	85	90	100	120	140	150	150
Feb. 1, 1914.....	26	32	38	44	50	56	62	68	74	80	92	104	116	128	140
Sept. 1, 1915.....	31	36	42	48	54	59	65	71	77	82	94	105	117	128	140
Worsey (191.3 miles):															
Prior to Feb. 1, 1914.....	45	55	60	70	75	80	85	90	100	100	120	140	150	150	150
Feb. 1, 1914.....	28	36	44	52	60	68	76	84	92	100	116	132	148	164	180
Sept. 1, 1915.....	33	40	48	56	64	71	79	87	95	102	118	133	149	164	180
Melleto (243.7 miles):															
Prior to Feb. 1, 1914.....	45	55	60	70	75	80	85	90	100	100	120	140	150	150	150
Feb. 1, 1914.....	29	38	47	56	65	74	83	92	101	110	128	146	164	182	200
Sept. 1, 1915.....	34	42	51	60	69	77	86	95	104	112	130	147	165	182	200
Aberdeen (265.3 miles):															
Prior to Feb. 1, 1914.....	50	60	65	75	85	90	100	100	100	100	120	140	160	175	175
Feb. 1, 1914.....	29	38	47	56	65	74	83	92	101	110	128	146	164	182	200
Sept. 1, 1915.....	34	42	51	60	69	77	86	95	104	112	130	147	165	182	200

It appears from this table that large reductions were made in interstate charges for the lighter packages. In our general investigation it was—

found by most extensive examination of express records that approximately one-half of the express business consists of packages under 20 pounds in weight; and the average shipment, including carloads of horses and of fruit and vegetables, is but 34 pounds. *Express Investigation*, 24 I. C. C., 380, 428.

The fact that there has not been greater increase in express business from Sioux City to South Dakota points since 1911 finds further explanation, according to the view of the state commission, in the very material development of South Dakota industries which has taken place in those years. In Mitchell there are two ice cream plants, one wholesale grocery, one wholesale furniture house, two fruit companies, two wholesale beer distributors, two establishments selling butter, eggs, and produce, two wholesale cigar houses, three wholesale printing houses, three bakeries, two auto and supply companies. Of these the larger number have been established within the last three or four years. Mitchell is served by both defendants, which operate over two lines of railroad running in several directions from the city. Evidence of a similar character was offered as to other distributing centers of South Dakota, such as Sioux Falls and Aberdeen.

Other facts intended to lead to the same conclusion are emphasized. In 1910 there were 36 manufacturers of ice cream in the state. The butter fat used annually by them was valued at approximately \$70,000. In 1914 there were 67 manufacturers using in that year butter fat worth \$270,000. In 1909 the state legislature enacted a law which requires that ice cream manufactured or sold in the state shall contain 14 per cent butter fat. In Iowa the legal requirement is 12 per cent. The South Dakota statute is said to have resulted in fewer purchases from manufacturers located outside of the state. In 1910, 30,639,626 pounds of ice cream were produced and sold in the state; in 1915, 46,537,795 pounds. It is likewise shown that a change has taken place in the business of retailing drugs. Formerly retailers gave relatively few orders to distributing houses and carried large stocks, whereas in recent years they have given smaller and more frequent orders. This has created a demand for quicker service with its concomitant result of increasing the number of distributing houses and localizing their distribution. Explanation of the slow growth of Sioux City's express trade in South Dakota is further traced to improvement in the organization and business methods of South Dakota jobbers, to their more intimate acquaintance with local needs, to their increased use of the parcel post, and to the loyalty of South Dakota purchasers to the industries of their state.

After reviewing all of the evidence offered by the state commission on this phase of the case, however, the conclusion is unavoidable that the essential allegations of the complaint have been established. There is active competition between Sioux City shippers and shippers located in the state of South Dakota for the trade of that state in such commodities as commonly move by express. There are large differences between the interstate and intrastate express rates applicable to the transportation of these commodities for equal distances. These differences in rates place a burden upon interstate shippers and give a corresponding advantage to intrastate shippers, thus accomplishing an inevitable restriction of shipments in interstate commerce or shrinkage of profits.

TRANSPORTATION CONDITIONS.

Witnesses for the complainant and for the defendants testified that the circumstances and conditions of transportation by express between Sioux City and South Dakota points are substantially the same as those obtaining on transportation between the jobbing cities of South Dakota and other points within that state. The rate expert of the state commission testified that there is no material difference in transportation or operating conditions in northwestern Iowa and southeastern South Dakota. Annexed to an exhibit of this witness, which compares South Dakota freight rates with the lower freight schedules of the state of Iowa, is a statement that—

there are no material differences in operating, traffic, or other conditions as between the territory in southeastern South Dakota and the territory in northwestern Iowa, in which Sioux City is located * * *.

The state commission, however, places some emphasis upon one fact with relation to express service in South Dakota. This has to do with the collection and delivery of packages. There are 388 express stations in South Dakota at but 40, or 10.3 per cent, of which is the service of collection and delivery maintained. Evidence offered by the state commission and intended to show the actual extent of collection and delivery service in South Dakota may be summarized as follows: Of shipments received by Wells Fargo & Company at South Dakota stations in September, 1913, 61.2 per cent were not given delivery service; in January, 1914, 56.6 per cent; in November, 1913; 57.8 per cent. Of shipments forwarded by the same company from South Dakota stations in September, 1913, 20.6 per cent were not collected; in January, 1914, 27.4 per cent; in November, 1913, 25.8 per cent. The service of collection and delivery, however, is accorded to Sioux City and to competing cities in South Dakota. Whether or not delivery of packages is made at the stations to which

the shipments move, it is obvious that the same service is rendered whether the transportation is from Sioux City or from the South Dakota cities with which it competes. The facts thus brought to our attention by the state commission do not, therefore, show a difference in the circumstances and conditions of transportation. They seem to have been urged in part as showing the propriety of a lower level of express rates for intrastate traffic than might reasonably be made effective for such interstate shipments as receive in larger measure the service of collection and delivery.

The contention is also made that Sioux City is compensated for the unequal relation of express rates in the enjoyment of freight service which is better in certain respects than that of the South Dakota cities. This is especially urged in the brief of the South Dakota cities. It is clear, however, that the right to a proper relation of express rates is not qualified by differences of freight service.

In the foregoing paragraphs we have reviewed the facts upon which the state commission places special emphasis in support of its position in this case. There remains for brief consideration the evidence offered at considerable length by defendants.

DEFENDANTS' EVIDENCE.

This evidence is intended chiefly to show that the discrimination, as alleged in the complaint and admitted by the answers, does in fact exist, and that the state schedules of express rates are too low to form the measure of reasonable interstate rates applicable between Sioux City and South Dakota points and to other interstate movements from and to points in that state. We shall not review this evidence in detail. Certain statistics, directed especially to our attention, show that the South Dakota intrastate express business of the American Express Company for the year ended June 30, 1915, estimated on the business of two representative days, yielded 60.9 per cent of the revenue which the same business would yield under the contemporaneously effective interstate rates for similar distances, while the intrastate business of Wells Fargo & Company for the month of November, 1913, yielded 58.3 per cent of the revenue similarly computed. As a result of defendants' efforts and those of state commissions to make the system established by this Commission of uniform application throughout the United States, aided in some instances by modifications of our order, the rates, rules, and regulations prescribed by us have been adopted in 40 states, and more than 90 per cent of the express business of the country is now being handled thereunder. *Express Investigation*, 35 I. C. C., 3, 4.

CONCLUSIONS.

The state commission asks us to distinguish this case from *Railroad Commission of La. v. St. L. S. W. Ry. Co.*, 23 I. C. C., 31; 234 U. S., 342, familiarly known as the *Shreveport Case*, by reason of certain considerations which we shall state by quotation from its brief. We are referred to *Saunders & Co. v. Southern Express Co.*, 18 I. C. C., 415, in which under facts in part similar to those now before us, the Commission held the case in abeyance pending the determination of court proceedings. The state commission in the statements of its contentions, quoted in the following paragraphs, has paraphrased certain references made by Commissioner Prouty to that case in his concurring opinion in the *Shreveport Case*, *supra*, p. 49:

1. There is no claim of any intent to prefer Sioux Falls or any other South Dakota city to Sioux City or any other city in an adjoining state; the express rates in question are those of the South Dakota Railroad Commission, applicable over all lines.

The defendants take issue with the state commission upon the principal fact underlying this contention. They ask us to find that—the rates on state business were arbitrarily made without due investigation, without any consideration as to whether or not they were compensatory, and for the purpose of unduly favoring South Dakota shippers.

The circumstances surrounding the making of the intrastate express rates are sufficiently disclosed in the foregoing footnote quoted from the brief of the state commission. It is there frankly stated that the act of legislation requiring a reduction of intrastate express rates “was in some sense, at least, a retaliatory measure,” but the record before us affords no justification for the assertion that the intrastate rates were reduced for the purpose of unduly favoring South Dakota shippers as against their Sioux City competitors. The matter of intention may be of importance under some circumstances in an issue of this character, but it can not be controlling. We have before us the relation of express rates as they now exist and it is our duty to determine whether this relation effects such discrimination as the act condemns. If such discrimination is shown it is none the less our duty to require its removal, although the cause of the unlawful relation may have had its origin in motives which are above criticism. On the other hand, if such discrimination is not shown an order based upon a finding of wrongful intention would find no warrant in law.

2. To hold that those (the intrastate) rates are unduly low would be of necessity to hold that the South Dakota schedule as a whole is unduly low, and there is no evidence upon which the Commission could properly do that. On the other hand, it does not seem clear that the rates from Sioux City are

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unduly high, or certainly that rates as low as those prescribed by the South Dakota commission, if applied from Sioux City, might not be unduly low.

Here the state commission frankly suggests that the intrastate express rates might be unduly low if applied from Sioux City to South Dakota points. Although a finding that the intrastate rates are too low for application from Sioux City may, in inference, imply a similar judgment with regard to the intrastate schedule as a whole, or may, in consequence, result in the readjustment of those schedules, the fact remains that the intrastate rates as a whole are not directly involved in this case. We have referred to the answers of the defendants as containing allegations which would broaden the issues and bring before us for review the relation of express rates for other movements than those between Sioux City and South Dakota points, on the one hand, and between points in that state, on the other. Such movements would embrace transportation by express between points in South Dakota and points in Minnesota, Iowa, Nebraska, Wyoming, Montana, and North Dakota. Upon such an inquiry other interests than those which appear before us here would be entitled to be heard. We shall limit our findings to the allegations of unreasonableness and unjust discrimination found in the complaint.

3. The reasonableness of the express rates under consideration is being contested before the federal court of the United States, and a course which might be adopted by the Commission in this case in harmony with precedent would be to retain the complaint in this case on the docket, where it might be made the subject of further investigation.

The suit in equity now pending in the district court of the United States for the district of South Dakota does not bring into issue, strictly speaking, the reasonableness of the intrastate rates. The inquiry there is whether the state has overstepped the constitutional limit by making the express rates so unreasonably low that the carriers are deprived of their property without due process of law and denied the equal protection of the laws. *The Minnesota Rate Cases*, 230 U. S., 352, 433. *Holmes & Hallowell Co. v. G. N. Ry. Co.*, 37 I. C. C., 627, 635. If it should be held in that case that the intrastate express rates are not confiscatory, it would still be the duty of this Commission, for which it has full power, to require the removal of an unjust discrimination against interstate commerce. The state commission points to *Saunders & Co. v. Southern Express Co.*, *supra*, as a precedent for withholding an order pending the conclusion of court proceedings. Our action in that case was taken before the decision of the Supreme Court in the *Shreveport Case*, *supra*, at a time when some doubt existed as to our authority to remove unjust discriminations caused by the relation of interstate and intra-

state rates. Circumstances may undoubtedly arise which would make it proper for this Commission to withhold its order, but it is clearly under no requirement to do so, for through the delays of litigation such a requirement would make it possible to maintain and perhaps indefinitely prolong a discrimination which unjustly restricted the free movement of commerce between the states. In the case before us there is no warrant for withholding our order. The complaint was filed on July 13, 1914. Testimony offered by the complainant and defendants was taken on October 26 and 27, 1914. A further hearing, granted on request of the state commission, was not held until September 24, 1915, owing in part to the requests of that commission for sufficient time in which to prepare and present its evidence. Briefs have been filed and the parties have been fully heard in oral argument. There is no suggestion that the record is incomplete or that further evidence would be of value in determining the issues before us. The complainant has shown that unjust discrimination exists for which it is entitled to relief. We think, therefore, that an order should be entered without further delay.

4. Should the Commission find that the circumstances of transportation from Sioux City and from Sioux Falls are the same, and should it, upon the finding, order the express companies to remove discrimination by putting into effect the same rates from these two points, a compliance with such an order would require the express companies either to reduce their Sioux City rate or to assume the burden of showing that the South Dakota intrastate express rates established by the state commission are unduly low.

In the sentence of his opinion which follows those thus paraphrased Commissioner Prouty said:

It did not seem to me just to cast this onus upon the carrier until we had gone far enough in our investigation to be willing to say ourselves how the discrimination should be corrected. 23 I. C. C., 31, 49.

This Commission had not then made the exhaustive investigation of express rates which has since been completed, *Express Investigation, supra*. We are here under no doubt as to how the unjust discrimination found to exist should be corrected, for the record conclusively shows that the South Dakota rates are too low to be made the measure of interstate rates between Sioux City and South Dakota points, while there is no proof that the rates which this Commission has approved are unreasonable, nor has a basis been laid for a modification of our order.

We accordingly find:

(1) That rates for the interstate transportation of shipments by express between Sioux City, Iowa, and points in the state of South Dakota heretofore prescribed by us as reasonable have not been shown to be unreasonable.

(2) That the defendants maintain higher interstate rates between Sioux City and points in the state of South Dakota than between Sioux Falls, Mitchell, Aberdeen, Watertown, and Yankton, S. Dak., and points in the same state applicable to shipments by express which are transported under substantially similar circumstances and conditions.

(3) That thereby an undue preference is given to Sioux Falls, Mitchell, Aberdeen, Watertown, and Yankton, and an undue and unreasonable prejudice and disadvantage is effected against Sioux City.

(4) That the defendants should cease and desist from continuing said undue preference and unjust discrimination.

An appropriate order will be entered.

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No. 5251.¹

AXEL W. SWANSON

v.

TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted August 23, 1915. Decided May 29, 1916.

Complaints alleging that specific commodity rates published in defendant southwestern lines' tariffs and charged on carload shipments of bananas, between May 15, 1911, and February 15, 1912, from New Orleans, La., to Dallas and certain other Texas destinations, were illegally collected because lower class rates were applicable under an alternative clause in the tariffs and under defendants' classification exceptions, dismissed, as the classification exception provisions did not include bananas.

S. H. Cowan, M. C. H. Park, J. D. Williamson, and W. F. Young for complainants in Dockets Nos. 6536, 6536 (Sub-No. 1), 6642, 6693, and 6693 (Sub-No. 1).

E. P. Byars and B. D. Pelton for all complainants.

J. B. Payne, J. F. Garvin, J. S. Hershey, F. A. Leland, A. C. Fonda, J. H. Tallichet, and P. H. Welborne for defendants in Dockets Nos. 6536, 6536 (Sub-No. 1), 6642, 6693, and 6693 (Sub-No. 1).

Fred H. Wood; Baker, Botts, Parker & Garwood; Denegre, Leovy & Chaffe; E. A. Haid; George Thompson; T. J. Norton; Wilson, Dabney & King; and C. S. Burg for all defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

All these cases involve the rates applied by the defendants on carload shipments of bananas from New Orleans, La., to Dallas, Tex., and other Texas points during the period from May 15, 1911, to February 15, 1912. Three of the cases, Nos. 5251, unreported; 4703, 28 I. C. C., 594; and 7143, unreported, were decided some time ago but have been reopened for reconsideration with the remaining cases.

¹ The proceeding also embraces complaints in—No. 4703, *J. E. Bryant Company v. Fort Worth & Denver City Railway Company et al.*; No. 7143, *Tyler Produce Company et al. v. International & Great Northern Railway Company et al.*; No. 6536, *Southern Produce Company v. Texas & Pacific Railway Company*; No. 6536 (Sub-No. 1), *M. Hoffman et al. v. Texas & Pacific Railway Company et al.*; No. 6642, *Rotan Grocery Company v. Morgan's Louisiana & Texas Railroad & Steamship Company et al.*; No. 6693, *L. D. Smith et al. v. Texas & Pacific Railway Company et al.*; No. 6693 (Sub-No. 1), *Ablene Brokerage Company et al. v. Abilene & Southern Railway Company et al.*

The complaint in No. 5251 attacked the rate applied on carloads of bananas shipped from New Orleans to Dallas, which was a specific commodity rate of 72 cents per 100 pounds published successively in Leland's southwestern lines' tariffs I. C. C. Nos. 827 and 873. The commodity rate applied was published with provision for the alternative application of lower class rates if any such were provided elsewhere in the same tariffs. The question presented is, whether class rates lower than the commodity rates applied were thus provided through the peculiar typographical arrangement and structure of the tariff item. The complainant's contention was that section 1 of tariff No. 827, together with the classification exceptions on page 87-B thereof, and section 1 of tariff No. 873, together with the classification exceptions on page 95 of that tariff, provided a rating of 4 cents per 100 pounds higher than the class C rate, or 56 cents per 100 pounds. We decided that complainant was right and awarded reparation accordingly. The complaints in Nos. 4703 and 7143 were subsequently disposed of in the same manner following the decision in No. 5251. No order has ever been entered in No. 7143. Reparation was also awarded in No. 4703 on carload shipments of coconuts and mixed carload shipments of coconuts and bananas, which shipments are not now in issue.

The complaints in the remaining cases involved were filed in January, February, or March, 1914, some of them more than two years after the reparation claims presented accrued. Many of the claims had been presented to the Commission informally within two years after they accrued.

The material portions of the tariff provisions involved, as published first in Leland's southwestern lines' tariff, I. C. C. No. 827, and then in tariff I. C. C. No. 873, are reproduced on the sheet opposite this page.

Both times the item was divided into two horizontal sections. The rate basis given in the carload column in the upper section was 6 cents per 100 pounds over class A rates. This basis gave rates higher than the specific commodity rates provided for bananas elsewhere in the same tariffs. But the rate basis given in the carload column in the lower section, 4 cents per 100 pounds over class C, gave rates lower than the commodity rates provided. The dotted line across the less-than-carload column of the lower section in No. 827 was directly in line with the second line of note A, which note related exclusively to peaches. In tariff No. 873 it was in line with the second line of note D, which related exclusively to lemons. We found in No. 5251 that the dotted line was not a leader, but merely signified the omission of less-than-carload ratings, and found that the rating in the carload column of the lower section, 4 cents over class C, was applicable to note B, relative to bananas, as well as to note A, rela-

As it appeared in Tariff No. 8-W, F. A. Leland's I. C. C. No. 827 (page 87-B):

EXCEPTIONS TO THE WESTERN CLASSIFICATION.

ARTICLES	BASES.	
	Less Car oads.	Carloads.
<p>FRUITS: Apricots, Bananas, Cherries, Cocomanute, Grape Fruit, Grapes, Lemons, Oranges, Peaches (see Note A), Pears, Pineapples and Plums, in straight or mixed carloads, minimum weight 24,000 pounds (see Note B).....</p>	6 cents per 100 pounds higher than Class A rates. * * * *
<p>Effective May 15th, 1911. (See ②)</p> <p>Note A.—Peaches, carloads, minimum weight 24,000 pounds. Applies from points in Louisiana to points in Texas only. Note B.—Bananas and Pineapples, in straight carloads, minimum weight 20,000 pounds. Note C.—Oranges, packed in boxes 12 x 12 inches at ends, 27½ inches in length, will be carried at weight of 80 pounds per box. When packages other than this standard size are used, actual weight will govern. Note D.—Lemons, estimated weight of 85 pounds per standard box not exceeding 27 x 14 x 13 inches in dimensions, will apply from New Orleans, La., to Texas points. Note E.—Free transportation will be furnished in both directions to one man in charge of one or more carloads of Bananas. Maximum limit for return transportation will be twenty days from date of shipment, with a further limit of 24 hours from date of issuance. Note F.—Free transportation will be provided in both directions to one man in charge of one or more mixed carloads of Bananas and Cocomanute from New Orleans, La., when destined to Texas points. Maximum limit for return transportation will be twenty days from date of shipment with a further limit of 24 hours from date of issuance.</p>	4 cents per 100 pounds higher than Class C rates. * * * *

②—Issued under special permission of the Interstate Commerce Commission, No. 17120, of April 22, 1911.

As it appeared in Tariff No. 8-X, F. A. Leland's I. C. C. No. 873 (page 95), effective December 7, 1911.
EXCEPTIONS TO THE WESTERN CLASSIFICATION.

Item No.	ARTICLES.	BASES.	
		Less Carloads.	Carloads.
36	<p>FRUITS: Apricots, Bananas, Cherries, Cocoanuts, Grape Fruit, Grapes, Lemons, Oranges, Peaches (see Note A), Pears, Pineapples and Plums, in straight or mixed carloads, minimum weight 24,000 pounds (see Note B).</p>	.....	6 cents per 100 pounds higher than Class A rates. * * *
	<p>Note A.—Peaches, carloads, minimum weight 24,000 pounds. Applies from points in Louisiana to points in Texas only. Note B.—Bananas and Pineapples, in straight carloads, minimum weight 20,000 pounds. Note C.—Oranges, packed in boxes 12 x 12 inches at ends, 27½ inches in length, will be carried at weight of 80 pounds per box. When packages other than this standard size are used, actual weight will govern. Note D.—Lemons, estimated weight of 85 pounds per standard box not exceeding 27 x 14 x 13 inches in dimensions, will apply from New Orleans, La., to Texas points. Note E.—Free transportation will be furnished in both directions to one man in charge of one or more carloads of Bananas. Maximum limit for return transportation will be twenty days from date of shipment, with a further limit of 24 hours from date of issuance. Note F.—Free transportation will be provided in both directions to one man in charge of one or more mixed carloads of Bananas and Cocoanuts from New Orleans, La., when destined to Texas points. Maximum limit for return transportation will be twenty days from date of shipment, with a further limit of 24 hours from date of issuance.</p>	.....	4 cents per 100 pounds higher than Class C rates. * * *

tive to peaches. We are now convinced, upon consideration of the whole item as a unit, that the rating provided in the carload column of the lower section was applicable exclusively to note A.

The upper section of the item named various fruits and provided a rating for straight or mixed carloads, minimum weight 24,000 pounds. The term "peaches" in the enumeration of fruits covered was followed immediately by the parenthetical insert "see note A," which referred the reader to note A in the lower section for some modification or explanation of the provision preceding the insert. The final phrase of the provision contained in the upper section, "minimum weight 24,000 pounds," was followed by the parenthetical insert "see note B." As note A named the same minimum weight as the upper section specified, the rating provided in the lower section plainly applied to peaches in carloads "from points in Louisiana to points in Texas only." Otherwise, the note accomplished nothing. Note B, on the other hand, expressly provided a lower minimum for bananas and pineapples when in straight carloads. Provision in a tariff note for the material reduction of both the minimum weight and rating on bananas and pineapples in straight carloads below the general minimum and rating prescribed for a number of fruits, including bananas and pineapples, in straight or mixed carloads, would be unusual at least. The better view of the effect of note B, therefore, is that it related exclusively to the minimum weight. If the rating, 4 cents higher than class C, applied to notes A and B because both rates appeared in the lower section, it must also have applied in connection with the remaining notes in that section. But to read the item as providing for the free transportation of caretakers of shipments taking the lower rating only, for example, as would then be possible, would be absurd.

Prior to May 15, 1911, defendants' tariffs provided a commodity rate of 72 cents for bananas in carloads from New Orleans to all Texas common points. By classification exceptions the various fruits described in a single item were rated class A in straight or mixed carloads, minimum weight 24,000 pounds, while by appropriate notes the rating on peaches to Texas was reduced to class C, with the minimum unchanged, and the minimum weight on bananas in straight carloads was made 20,000 pounds, without change in the rating. The ratings and rates applicable at that time were entirely clear. Our order of February 22, 1911, in *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463, in part required the reduction of the class A rates 6 cents per 100 pounds and of the class C rates 4 cents. Thereupon the tariff item involved in tariff No. 827 was published, on three days' notice, by the special permission of the Commission, cited on its face, to preserve and main-
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tain the existing rates on fruit. We may observe in this connection that, whereas rule 2 (a) of Tariff Circular No. 18-A required every reduction in rates, etc., to be indicated in the tariff or supplement by symbol or italics, nothing of the kind appeared in the item under consideration. The omission is not conclusive that no change was made, but it at least put shippers on inquiry with respect to the meaning of the item.

Effective February 15, 1912, the tariff was reformed, and since that date there has been no doubt that the rating of 4 cents higher than class C was specifically limited to peaches.

Throughout the period involved no exception seems to have been taken to the application of the commodity rates, and no shipper appears to have been misled by reason of the form in which the item in question was published. Apparently no shipments were made in the belief that lower rates had been made available. In *Hutchinson Mill Co. v. A., T. & S. F. Ry. Co.*, 25 I. C. C., 180, wherein ambiguous tariffs were presented for interpretation, we said:

The petitions of complainants do not allege that they have been misled to their detriment nor in any wise damaged, and the proceeding seems to have been instituted merely for the purpose of securing an interpretation by this Commission of the provisions of defendant's tariffs. While the various provisions when taken alone may give rise to some ambiguity and uncertainty, we are unable to find, upon consideration of the whole situation, that defendant's tariffs provided for the absorption of the switching charges involved.

We find that the rating, 4 cents higher than class C, was not made applicable to shipments of bananas by either issue of the tariff item in controversy and that the commodity rates charged were properly applied. Our order in Docket No. 5251, and that portion of our order in No. 4703 which awarded reparation on shipments of bananas in carloads, will be vacated, and all of the complaints, except that in No. 4703, will be dismissed.

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INVESTIGATION AND SUSPENSION DOCKET No. 750.
STOPPAGE IN TRANSIT OF FARM WAGONS.

Submitted March 21, 1916. Decided May 19, 1916.

Proposed cancellation of rules permitting the stopping in transit of carload shipments of farm wagons for the purpose of partial unloading in eastern trunk line territory justified.

W. J. Evans for National Implement & Vehicle Association.

W. I. Grove for Milburn Wagon Company.

H. A. Milling and *W. F. Pape* for International Harvester Company of America.

L. F. Ryer for Studebaker Corporation.

J. H. Miller for Emerson-Brantingham Company.

Ernest S. Ballard for respondents.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By tariff schedules, filed to take effect December 1, 1915, and January 1, 1916, respondents proposed to cancel their rules applicable in eastern trunk line territory which permit carload shipments of farm wagons to be stopped in transit for the purpose of partial unloading at a charge of \$5 for each stop. Upon protest by the National Implement & Vehicle Association the schedules were suspended until March 30, 1916, and later until September 30, 1916.

The present rules, which were established in 1912 at the request of wagon manufacturers, permit the stoppage in transit of carload shipments of wagons at one or more intermediate points at and east of the western termini of trunk line territory for the removal of parts of the shipments. Freight charges are assessed at the carload rate from point of origin to final destination upon the total weight of the shipment at the point of origin plus a charge of \$5 for each stop in transit. Protestants state that in practice they sell their wagons in approximately half carload lots; that, therefore, only one stop in transit is necessary; and that it would be satisfactory to them if the service were restricted to one stop. It is also stated that all loading and unloading is performed by the consignor and the consignees.

Witnesses for protestants, who represented a number of the largest agricultural implement and vehicle manufacturers in the country,

testified that while the percentage of their business upon which they could take advantage of the rules is comparatively small, it is nevertheless substantial and capable of development. They contend that the continuance of the rules is essential to the commercial distribution of their product. There are usually 20 wagons in a carload and they generally are sold in two lots. The purchasers usually are located in rural communities and are unable to take a whole carload of wagons at one time because of the light demand for wagons, lack of storage space, and financial handicaps. There is, of course, sharp competition between the various large wagon manufacturers, but the controlling competition is said to be with small manufacturers in the consuming territory, who build wagons and deliver them without rail transportation. Protestants state that it has been and will continue to be impossible for them to compete with the so-called local manufacturers in the territory here involved on the less-than-carload rates applicable to their shipments; that all of this class of business which they now have has been built up since the rules in issue became effective.

The carriers proposed on various dates between December 1, 1914, and March 1, 1915, to cancel these rules together with a number of other similar rules in effect in official and western classification territories. In *Stopping of Cars in Transit to Complete Loading*, 36 I. C. C., 130, after fully discussing the advantages and disadvantages accruing to shippers and carriers under such rules, we found that the proposed cancellations had not been justified and ordered the tariffs canceled. But we added that—

This conclusion is not to be construed as approving all of the existing rules and regulations governing this service on the various commodities included in the suspended tariffs; nor as implying that the service must be continued indefinitely on all of the commodities now included in the tariffs or in all localities.

The immediate reason for the proposed cancellation is said to be the protection of the carriers' less-than-carload revenue and the elimination of a preferential service not generally afforded for other articles. Stoppage in transit to complete loading or for partial unloading at points in trunk line territory is said to apply principally to the traffic in live stock, live poultry, fresh dressed meats, packing-house products, and provisions and to be necessary for such traffic because of its nature and its commercial distribution. Another reason given for canceling these rules is that they have been cited in attempts by shippers to secure the same service for other traffic.

We find that respondents have justified the cancellation of the rules in question, and our orders of suspension will be vacated.

An order will be entered accordingly.

HARLAN, *Commissioner*, concurring:

The respondent carriers, in justifying the tariffs here under consideration, explained that the underlying reason for the proposed withdrawal of the rules in question was the suggestion made in *The Five Per Cent Case*, 31 I. C. C., 351, that the carriers should take steps to conserve their revenues by curtailing special privileges and service concessions to shippers when that could justly be done. They also stated that the carriers in trunk line territory, conforming to that suggestion, have undertaken such a revision. Various changes have already been made; in some cases the inadequate charges previously in effect have been increased so as more closely to approximate a reasonable compensation for the service rendered; in other cases charges have been established for special services theretofore performed without charge; and in still other cases special advantages and free services have been entirely eliminated. Falling within the latter class is the "stop-off privilege" on farm wagons described upon this record. This service the respondent carriers concluded should be withdrawn in order to protect their less-than-carload revenues and at the same time to discontinue a preferential service that relatively few shippers are in a position to use and which is not generally accorded to other traffic.

My views respecting the constructive course in these matters suggested by the Commission in *The Five Per Cent Case*, *supra*, were fully discussed in *Commercial Exchange of Philadelphia v. R. R. Co.*, 38 I. C. C., 551, 559, and it will suffice here to repeat that if the rate structure of this country is to be put upon a sound basis and be freed from undue preferences and unlawful concessions, the principles announced in *The Five Per Cent Case* must be broadly and effectively applied.

39 I. C. C.

No. 5537.
ANDERSON-TULLY COMPANY
v.
ALABAMA & VICKSBURG RAILWAY COMPANY ET AL

Submitted November 22, 1915. Decided May 19, 1916.

Former finding that the rate charged on certain carload shipments of box shooks from Vicksburg, Miss., to Port Arthur, Tex., which moved over the Vicksburg, Shreveport & Pacific Railway and connecting lines was unreasonable, but that the rate charged on shipments moving over the Yazoo & Mississippi Valley Railroad and connections was not shown to be unreasonable, affirmed on rehearing.

John R. Walker and *H. B. Anderson* for complainant.

J. M. Souby and *S. W. Moore* for Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company.

C. H. McKay and *E. A. Smith* for Yazoo & Mississippi Valley Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION :

This case was originally decided May 4, 1914, unreported. The complaint, filed February 14, 1913, alleged that the rate of 20 cents per 100 pounds charged by defendants for the transportation of various carload shipments of box shooks from Vicksburg, Miss., to Port Arthur, Tex., which moved within two years preceding that date, was unreasonable. Reparation was asked. It developed that during the period from February, 1911, to October, 1913, complainant shipped 398 carloads of box shooks from Vicksburg to Port Arthur, of which about 60 per cent were moved by the Vicksburg, Shreveport & Pacific Railway through Delta Point, La., on the west bank of the Mississippi River opposite Vicksburg, to Shreveport, La., and by the Kansas City Southern and Texarkana & Fort Smith railways thence to Port Arthur, a total distance of about 398 miles, the remaining shipments being moved by the Yazoo & Mississippi Valley Railroad to Baton Rouge, La., and by the New Orleans, Texas & Mexico Railroad and Kansas City Southern and Texarkana & Fort Smith railways thence to destination, a total distance of about 354 miles. A joint rate of 20 cents per 100 pounds was applicable over both routes and was properly applied to all of the shipments.

Prior to May 24, 1913, a rate of 3 cents per 100 pounds applied on box shooks, in carloads, from Vicksburg to Delta Point and a rate of 13 cents from Delta Point to Port Arthur, which rates aggregated 16 cents per 100 pounds. Effective May 24, 1913, following the filing of the complaint, the rate from Delta Point to Port Arthur was increased to 17 cents, thereby increasing the aggregate of the rates to and from Delta Point to 20 cents. The previous discrepancy between the through rate and the aggregate of the rates to and from Delta Point was protected by an appropriate fourth section application. We found that the rate charged on the shipments which moved through Baton Rouge was not shown to have been unreasonable but that the rate charged on the shipments which moved through Delta Point was unreasonable to the extent that it exceeded the aggregate of the intermediate rates to and from Delta Point, and that complainant was entitled to reparation on these shipments accordingly. The Kansas City Southern and the Texarkana & Fort Smith railways subsequently filed a petition for rehearing alleging, among other things, that we erred in awarding reparation on the shipments moved through Delta Point because of the protective fourth section application mentioned; because the joint through rate was shown conclusively to be reasonable; and because the rate on box shooks from Vicksburg to Delta Point was 5 cents per 100 pounds and not 3 cents. An order was entered reopening the case on October 13, 1914. Rehearing has since been had, and the case is now before us on the whole record.

It appears that during the period of movement the Vicksburg, Shreveport & Pacific Railway maintained a rate of 5 cents per 100 pounds from Vicksburg to Delta Point on "Lumber: Box material, minimum weight 30,000 pounds, carloads"; and a rate of 3 cents per 100 pounds on "Lumber, logs, lath, shingles, staves, shooks, and heading * * * minimum weight 30,000 pounds * * *." Defendants insist that the word "shooks" appearing in the second item quoted was a typographical error and should have been "hoops." This may be true, but the rate on box shooks from Vicksburg to Delta Point was 3 cents per 100 pounds, and not 5 cents as defendants contend.

Most of the testimony offered by defendants on rehearing was cumulative. The defendants who filed the petition for the rehearing stated that their aim was to have the case reconsidered on the evidence adduced at the first hearing rather than to have an opportunity to offer additional testimony. They showed that there is no movement of box shooks from Vicksburg to Delta Point and also introduced an exhibit contrasting the 20-cent rate assailed with rates on lumber and staves ranging from 7.5 cents per 100 pounds to 25.67 cents for distances ranging from 116 miles to 615 miles between cer-

39 I. C. C.

tain points in the south, but without evidence that the conditions were substantially the same. Complainant shows on the other hand that a rate of 15 cents per 100 pounds applied on box shooks from Delta Point to Port Arthur over the Vicksburg, Shreveport & Pacific to Shreveport and the lines of the Southern Pacific beyond, and that this rate is still in effect; that the earnings per car-mile on the shipments involved under the rate sought, over either route of movement, would have exceeded the average earnings per car-mile of certain of the defendants on all traffic over their respective lines during 1914. Numerous rates on lumber and like traffic are cited also between various points in the same and other territories, but like the rates cited by defendants, without evidence of substantial similarity in transportation conditions. Indeed the rates cited by complainant were made and are maintained under substantially dissimilar circumstances and conditions.

The Kansas City Southern and the Texarkana & Fort Smith cite *Humphreys-Godwin Co. v. Y. & M. V. R. R. Co.*, 31 I. C. C., 25, and cases there cited, in which we found that published through rates in excess of combinations of intermediate rates were not unreasonable. This is not such a case.

We find upon all of the facts now before us that our previous findings were not erroneous and they are, therefore, affirmed.

HARLAN and DANIELS, *Commissioners*, dissent.

39 I. C. C.

No. 7199.
UNITED CIGAR MANUFACTURERS COMPANY
v.
GULF, COLORADO & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 3, 1915. Decided May 29, 1916.

Double first-class rating on bent "vitrolite" signs in less than carloads from Chicago, Ill., to points on defendants' lines in western classification territory and charges collected on specified shipments not found to have been unreasonable. Complaint dismissed.

Clarence J. Bassler for complainant.

R. C. Fyfe and *W. E. Prendergast* for defendants and Western Classification Committee.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and distribution of cigars, with its principal place of business at New York, N. Y. By complaint, filed August 24, 1914, as amended, it alleges that the double first-class rating applied by defendants on numerous less-than-carload shipments of bent "vitrolite" cigar signs from Chicago, Ill., to specified points of destination in western classification territory, during the period from April 23, 1912, to November 8, 1912, was unjust and unreasonable. Reparation is asked. The claim was first presented to the Commission December 18, 1913.

"Vitrolite" is the trade name applied to a composition made by only one concern. It is opaque and milky white in appearance and is made of sand, marble dust, cryolite, china clay, feldspar, fluorspar, bone ash, soda ash, nitrate of sodium, magnesia, and other ingredients which are undisclosed. The ingredients are fused at a temperature of 3,400 degrees, Fahrenheit, and the molten compound is poured with ladles upon a large iron table, where it is rolled into finished flat slabs about 60 feet square. The slabs are made in different thicknesses, varying from one-fourth of an inch to 1½ inches, and can be sawed. They are used as toilet partitions, wainscotings, tiling, ceilings, counter tops, table tops, refrigerator linings, etc. "Vitrolite" competes with marble and tile and also with various other compositions, sold under trade names, which take the same rating.

The shipments involved consisted of bent "vitrolite" signs. The sample exhibited at the hearing was 16 inches in width and 23 inches in height, with a maximum thickness of 4 inches. The signs were made of one-piece convex vitrolite slabs, decorated with advertising matter burnt on in various colors. They were backed with tin and shaped for use on the corners of buildings. The slabs were fitted in wooden frames and held there by narrow metal frames cleated across the front edges of the slabs and screwed to the wood. The signs weighed about 13 pounds each, and sold at \$2.50 apiece in quantities. The shipments were boxed.

The western classification governs traffic between the points involved. No specific rating was or is provided for "vitrolite" signs as such, and charges were collected on the shipments in accordance with the following classification provision in effect when they moved:

Glass signs and show cards (painted or figured on glass), boxed, L. c. L., double first class.

Complainant urges that the reasonable rating would not have exceeded first class, and relies principally upon the contention that "vitrolite" is not glass, urging in support of this contention that "vitrolite" fuses at a temperature of from 1,100 degrees to 1,200 degrees, Fahrenheit, higher than plate glass; that it is superior to glass in strength and density; that it is less valuable; and that its heat-resisting quality makes it possible to burn china colors on it at a temperature that would melt other opaque compositions or render them transparent. Defendants contend that "vitrolite" is really glass, and that it is not the policy of classification committees to provide for articles by trade names or registered trade-marks. They show that glass is a fused mixture of silica and two or more alkali bases; that the fusing point varies with its composition; and that all the ingredients enumerated by complainant are commonly used in its manufacture.

The sample of vitrolite offered in evidence discloses that it is vitreous in character, not merely on the surface, but throughout.

The western classification rates plate glass of the size usually used for signs first class; bent glass, double first class. Signs of the kind in controversy, in less than carloads, are rated the same in the western, the official, and the southern classifications.

We find that the rating assailed and charges collected are not shown to have been or to be unreasonable, and an order will be entered dismissing the complaint.

S. I. C. C.

No. 5650.
CHARLES BECKER, TRADING AS WISCONSIN COAL
COMPANY,

v.

PERE MARQUETTE RAILROAD COMPANY ET AL.

No. 5650 (Sub-No. 1).
ELMORE BENJAMIN COAL COMPANY:

v.

SAME.

Submitted December 1, 1915. Decided May 31, 1916.

1. The "reasonable time" within which consignees should have given orders for reconsignment at Milwaukee or Ludington so as to have avoided the charge for reconsignment extends from the day on which (passing) notice was mailed until noon of the second day thereafter.
2. Reconsignment charges assessed between December 18, 1912, and February 9, 1913, should be refunded if orders for reconsignment were given prior to arrival of cars at Milwaukee or within the "reasonable time" prescribed.
3. Reconsignment charges assessed at Ludington between February 9, 1913, and April 10, 1914, should be refunded if carrier failed to furnish passing notice at Toledo, or if complainant had given reconsignment orders within the "reasonable time," or prior to the arrival of the car.
4. All demurrage assessed during period of controversy, December 18, 1912, to February 9, 1913, must be refunded.
5. Demurrage charges, lawfully accruing and assessed from February 9, 1913, to April 10, 1914, must stand.
6. Reconsignment charges at Milwaukee, subject to the finding as to "reasonable time," should be assessed between October 17, 1912, and December 17, 1912, inclusive.

Gill & Barry for complainants.

John C. Bills for Pere Marquette Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

MEYER, Chairman:

The original report in this proceeding, 28 I. C. C., 645, dealt primarily with the reasonableness of defendant's rules governing the reconsignment at Milwaukee, Wis., and Ludington, Mich., of bituminous coal originating at mines south of Toledo, Ohio, and moved via

that point and the line of the Pere Marquette to the points of reconsignment. Among other things, it was found that unjust and unreasonable reconsignment and demurrage charges had been exacted and that complainants were entitled to reparation. The parties were unable to agree upon the amount of reparation due under our findings and the cases are reopened to determine that question.

Previous to October 17, 1912, reconsignment was performed at Milwaukee without charge. A tariff effective on that date, not enforced until December 18, 1912, provided specifically for reconsignment at Ludington at a rate of \$2 per car. After the latter date the carrier refused to forward complainants' cars through Ludington to Milwaukee for reconsignment there, although complainants demanded such reconsignment as a matter of right under a rule of the same tariff. On February 9, 1913, the reconsignment tariff was amended, with the intention of correcting the ambiguity therein, to contain the express stipulation that no reconsignment of bituminous coal would be made at Milwaukee, and that a charge of \$2 per car would be assessed for this service at Ludington unless reconsignment orders were received prior to arrival of the car there. The period beginning with the date of the enforcement of the former tariff, namely, December 18, 1912, and ending with February 9, 1913, the last effective date of that tariff, is referred to herein as the "period of controversy."

Beginning February 9, 1913, the shipments which had been detained at Ludington pending the dispute were reconsigned upon the suggestion of the Commission, the shippers reserving the right to contest the charges which had accrued. The amended tariff and a reissue thereof remained in effect from February 9, 1913, until April 10, 1914, and shipments were reconsigned thereunder at Ludington. On the latter date, in compliance with our original order herein, a new tariff was filed allowing reconsignment at Milwaukee free when prompt orders were given after passing notices from Toledo were mailed and before the arrival of the cars at Milwaukee, and at a rate of \$2 per car otherwise.

The complainants now claim reparation in the amount of demurrage paid upon cars held at Ludington during the entire period from December 18, 1912, to April 10, 1914, and reconsignment charges paid on such cars, where a reasonable time had not elapsed after the receipt of the Toledo passing notice to permit reconsignment orders to be in the hands of the Ludington agent before the car arrived at Ludington. The defendant concedes that amounts paid for demurrage at Ludington during the period of controversy should be refunded, as should also amounts paid for reconsignment where orders were received by the carrier's agent before arrival of the car at Ludington. But defendant's brief says further:

Unless a reconsignment order was communicated by the complainants to the agent at Milwaukee prior to 9 a. m. of the second business day after the mailing of the passing notice from Toledo, complainants should be held to have run the risk of the car arriving at Ludington prior to their reconsignment order being given, and if it did so arrive they should be made to pay the reconsigning charge.

It is conceded by defendant that although the tariff required notice to the agent at Ludington, notice to the Milwaukee agent was sufficient compliance therewith. Such has been the accepted practice.

We shall determine first the "reasonable time" in which reconsignment orders must have been given by the consignees. It appears that passing notices were mailed from Toledo at 5 p. m. daily. The aim was to include in each day's notice all the cars which had passed that day, but if a car was omitted from one day's list it was put on the next day's list without notation to that effect. It thus happens that the date of the passing notice did not necessarily indicate the actual date that each car passed Toledo. The defendant contends that, according to the schedule of the mail service between Toledo and Milwaukee, passing notices so mailed in Toledo arrived in Milwaukee at 9 o'clock on the morning following the date of mailing. But the record indicates that they were usually received throughout that day, some in the morning, and many in the afternoon. In view of this, 36 hours from the time of mailing the passing notice at Toledo would not have been the "reasonable time" contemplated in our former decision. It would seem that such "reasonable time" should have included the morning of the second day following mailing, in order that complainants should have had reasonable opportunity to effect reconsignment, by phone notice to the Milwaukee agent, of cars on which passing notices had been delayed in transmission. The Commission's view is that the "reasonable time" within which consignee should have given orders for reconsignment at Milwaukee or Ludington so as to have avoided the charge for reconsignment extends from the day on which notice was mailed until noon of the second day thereafter. This rule is intended for application only to the questions of reparation involved in this proceeding, and should be applied only to cars which arrived at reconsignment point before orders for reconsignment were given.

Having determined the reasonable time for the reconsignment notice to have been given we may now consider the questions raised upon the second hearing as to the practical application of the previous decision. These fall under the following subjects:

1. Reconsignment, during the period of controversy.
2. Reconsignment, from February 9, 1913, to April 10, 1914.
3. Demurrage, from December 18, 1912, to February 9, 1913.
4. Demurrage, from February 9, 1913, to April 10, 1914.
5. Reconsignment, October 17, 1912, to December 17, 1912, claimed as set-off in favor of defendant.

1. Reconsignment, during the period of controversy. Our original report herein, at page 650, says:

Complainants' contention that they were entitled to free reconsignment at Milwaukee under rule 7 of the tariff of October 2, 1912, we are of opinion, is not well founded,

and on page 658:

Under rule 5 and the general provisions of the defendant's reconsigning tariff, I. C. C. 2994, the complainants were entitled to the reconsignment service at Milwaukee, although they would have been compelled to pay for it the charge of \$2.

Reconsignment charges upon cars detained at Ludington during the period in controversy should be refunded if reconsignment orders were given before arrival at Milwaukee or within the time found reasonable for such orders, as determined above, i. e., before 12 o'clock noon of the second day following that on which the passing notice was mailed from Toledo.

2. Reconsignment from February 9, 1913, until April 10, 1914. We said on page 652 of the previous report:

Reconsignment at Ludington does cause the complainants great disadvantage and inconvenience.

But the tariff named a rate of \$2 for the service there. With respect to cars which arrived at Ludington in less than the reasonable time for reconsignment, we find that the impossibility of avoiding the charge is sufficient ground to hold that the charges paid under such circumstances were improperly assessed and must be refunded. Also, if the carrier failed to give passing notice, or if complainants gave orders for reconsignment within the reasonable time or prior to the arrival of the car, then reconsignment charges must be refunded.

As to cars on which the carriers had given passing notice in sufficient time to have allowed complainants to give orders for reconsignment, reconsignment charges paid should not be refunded unless orders for reconsignment had been given.

3. Demurrage from December 18, 1912, until February 9, 1913. No dispute arises out of our finding that all demurrage charged on shipments detained at Ludington during the period of controversy should be refunded.

4. Demurrage from February 9, 1913, until April 10, 1914. The discussion on page 659 of the previous report shows clearly the reasoning which precludes the legitimate imposition of any charge for demurrage at Ludington during the period of controversy. But the same facts do not exist as to the demurrage thereafter and until April 10, 1914. The tariff which became effective on February 9, 1913, and its reissue were sufficient notice to complainants that they would have to reconsign within a reasonable time or pay demurrage for cars held awaiting orders. Although the rule was afterwards

held to be unreasonable in that it did not allow reconsignment at Milwaukee, the complainants were bound to observe the legally published tariff while in effect. The fact that complainants' first petition for rehearing herein, which was on the ground that all reconsignment and demurrage charges at Ludington should be refunded, was denied, further indicates that demurrage charges lawfully accrued during the second period must stand.

5. With respect to reconsignment charges claimed as set-off in favor of defendant between October 17, 1912, and December 17, 1912, inclusive, it is enough to say that there was no authority for the waiver of the lawful charges for reconsignment during this period. Charges should be assessed, therefore, on the basis of the reasonable time found herein for such reconsignment.

Upon the present decision the parties should be able to agree as to the amount of reparation due. Upon the submission to the Commission of statements prepared in conformity with the views announced herein an order of reparation will be made for those charges which were actually borne by the complainants.

No. 7621.
ROWE MANUFACTURING COMPANY
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.

Submitted August 22, 1915. Decided May 29, 1916.

Western classification first-class rating applicable prior to November 1, 1912, to fence gates made of iron and wood, in less than carloads, found to have been unreasonable and unjustly discriminatory to the extent that it exceeded third class. Reparation awarded on shipments from Galesburg, Ill., to various interstate destinations.

John S. Burchmore for complainant.

R. C. Fyfe and *W. E. Prendergast* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of fence gates at Galesburg, Ill. By complaint, filed December 26, 1914, it alleges that the western classification first-class rating and rates applied by defendants to various less-than-carload shipments of fence gates made of iron and wood, transported from Galesburg to specified destinations in Missouri, Iowa, Kansas, Oklahoma, Minnesota, North Dakota, South Dakota, Wisconsin, and Nebraska, during the two-year period preceding the filing of the complaint, were illegal, unreasonable, and unjustly discriminatory. Reparation is asked. The claim on one shipment to Dunbar, Nebr., delivered December 24, 1912, is barred by the statute of limitation.

Complainant's gates consist of 5, 6, or 7 boards, slightly separated, and held in a horizontal position by 8 perpendicular strips of flat iron, 4 on one side equidistant from each other and 4 opposite to them on the other side, the opposite strips being bolted together through the boards. A truss hinge brace consisting of 2 strips of flat iron is bolted to the boards on one side to form a triangle with one of the perpendicular iron strips at the hinge end of the gate. An identical brace is bolted to the boards on their opposite side to form a similar triangle with the other iron strip at the hinged end of the gate. The gates vary in length from 8 feet to 18 feet and from 4 feet to 5 feet in height. The weight ranges from something

less than 100 pounds to 200 pounds, the metal parts averaging from 30 pounds to 35 pounds. The type of gate shipped most extensively by complainant in western classification territory is 4½ feet high, 14 feet long, weighs about 125 pounds, and is sold delivered at low rate points for \$3.15 per gate. The gates involved were forwarded loose, uncrated, and ready to be hung.

Prior to November 1, 1913, the western classification, which governed the movements, contained no specific provision covering gates of iron and wood combined. An item in the classification, effective May 1, 1911, and in force when the shipments moved, provided for the application of the first-class rating on "fencing: wooden, n. o. s.: in sections, and gates," in less than carloads. Effective February 14, 1913, this item was changed, and has since provided as follows: "Fencing: wooden, not otherwise indexed by name: fence, in sections, gates loose, l. c. l., 1st class." Charges were collected on the shipments in issue on the basis of this rating. It appears, however, that on other shipments made during the period from 1909 to 1912 the third-class rating was applied to complainant's gates. Effective November 1, 1913, a specific rating was published for the first time as follows: "Fencing: gates, iron and wood, or wire and wood combined: in packages or loose, l. c. l., 3rd class"; which provision is still in effect. Another provision in the western classification when the shipments moved was third class for less than carloads of the following analogous articles: "Fencing: iron gates and attachments, including posts and timbers, k. d."; "fencing: gates (wire and wood, combined)"; and "fencing: wire: in rolls, and gates in bundles."

Complainant conceives that none of the classification items in effect prior to November 1, 1913, described the gates in controversy with sufficient particularity to constitute the publication of a rating within the meaning of section 6 of the act. We find, however, that the items in effect when the shipments moved relative to "fencing: wooden, n. o. s.; in sections, and gates" and "fencing: wooden, n. o. s.; in sections, and gates" and "fencing: wooden, not otherwise indexed by name: fence, in sections, gates loose," were sufficiently descriptive, and that the first-class rating was legally applicable.

Complainant contends that the charges collected under the first-class rating were unreasonable to the extent that they exceeded the charges that would have accrued on the basis of the third-class rating, and that the maintenance of the third-class rating on iron gates resulted in unjust discrimination. The present rating is not attacked and no attempt is made to prove that the first-class rates charged would have been unreasonable as applied to articles properly rated first class.

The gates made by complainant compete with so-called wire gates composed of iron frames and woven galvanized wire fabric com-

bined, which have been rated third class in western classification territory for a number of years. They weigh about 32 per cent more than some of the wire gates of approximately the same dimensions and do not occupy more than 56 per cent of the space which the wire gates occupy. The average delivered price of iron and wire gates of a size corresponding to the gates usually shipped by complainant is about \$6 each. Barbed wire on the top and bottom of the wire gates makes this kind of gate difficult to handle in uncrated less-than-carload shipments and also prevents top loading.

Defendants contend that the first-class rating would have been reduced sooner if complainant had promptly furnished the classification committee with essential information frequently sought concerning its gates, and that as the present rating was voluntarily established reparation should be denied.

We find that the rates charged were unreasonable and unjustly discriminatory as applied to the shipments involved to the extent that they exceeded the third-class rates; that complainant made the shipments as described and paid and bore charges thereon on the basis herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued upon the basis herein found reasonable; and that it is entitled to reparation from defendants with interest. The exact amount of reparation due can not be determined upon the present record, and complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, point of origin, point of destination, weight, route, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants we will consider the entry of an order awarding reparation.

As the present rating has been in effect over two years, no order for the future is necessary.

No. 5901.¹
ANDREAS GUNDERSON
v.
GULF & SHIP ISLAND RAILROAD COMPANY.

Submitted October 28, 1915. Decided May 29, 1916.

1. Under the defendant's rules governing the use of its wharf at Gulfport, Miss., vessels engaged in miscellaneous cargo service are, for reasons stated in the report, given preference in the assignment of space for loading over vessels engaged in the transportation of solid cargoes of lumber or other commodity. The complainant's bark *Edderside* refused, when first requested, to vacate temporarily for the benefit of another vessel, and for its refusal was denied space that later became available, until all other waiting vessels had been served. This action on the part of the defendant was not warranted by the rules and was unreasonable. The amount of the complainant's damage has not been sufficiently established upon this record to warrant an award of reparation.
2. The lawfulness of purpose of the defendant's rules is not definitely passed upon in this proceeding, in view of the complainant's independent cause of action arising from their improper application. As now framed, the rules are indefinite and should be revised. They should also be filed with the Commission, subject to future review, if necessary, upon complaint.
3. The record affords an unsatisfactory basis for determining who is entitled to the refund of demurrage that unreasonably accrued by reason of the *Edderside's* inability, during the period it was denied loading space, to take the lumber, which was the commodity here involved, from the defendant's cars.
4. Cases held open for 30 days from the date of service of report; within which the complainants may petition, if they desire, for further hearing on the question of reparation.

E. J. Bowers and Bowers & Bowers for complainants.

R. Walton Moore, B. E. Eaton, and C. D. Drayton for defendant.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

These complaints were filed July 7, 1913, and are therefore not barred by the statute of limitations. They were not set for hearing or heard until May 24, 1915, owing to requests of the parties for postponements from time to time, pending possible settlement, without hearing, of the matters in dispute.

¹ The proceeding also embraces complaints in No. 5901 (Sub-No. 1), *George R. Crossley v. Same*; and No. 5901 (Sub-No. 2), *Gress Manufacturing Company v. Same*.

The defendant owns the only available wharf for export vessels at Gulfport, Miss. On November 29, 1911, the bark *Edderside*, owned by the complainant Gunderson in No. 5901, docked at this wharf for a solid cargo of lumber consigned via defendant's line to ship side, for export to Rio de Janeiro, Brazil. On December 20 the *Edderside* was compelled by the defendant to vacate its space to make room for another vessel, the *Hova*, which docked for a cargo of export cotton, and the *Edderside* was denied this or other space until January 14, 1912, when it was assigned another berth. It completed the loading of its cargo on January 20, 1912.

The complainant Gunderson alleges that the defendant's action in depriving the *Edderside* of wharfage space during the period mentioned was unreasonable and unduly prejudicial and asks reparation in the amount of \$2,260, based on the alleged value of the vessel to him of \$90 a day, plus \$10 paid by him for having the vessel towed from and back to the wharf.

The complainant Crossley in Sub-No. 1 was the broker who bought and sold this lumber, and his claim is for the refund of \$390 demurrage that accrued thereon, by reason of the *Edderside's* inability, during the period it was denied loading space, to take the lumber from the defendant's cars.

The claim of the complainant Gress Manufacturing Company in Sub-No. 2 also arises under the defendant's wharf rules, in connection with a shipment of lumber from Gulfport to Bridgeport, Conn. Testimony was not taken in this case, for reasons to be stated later. What immediately follows will therefore relate to the other two cases, which arise, as stated, from the same transaction.

The *Hova*, which displaced the *Edderside* at the defendant's wharf, was in the service of J. M. Corry & Company, and the complaint of Gunderson is based in large part upon an alleged undue preference of the ships of that company. It is not denied by the defendant that Corry & Company ships were under certain circumstances favored, and this preference, it is explained, was accorded for the following reasons:

The line of the defendant was constructed to reach large quantities of standing timber. Much of the timber contiguous to its line has now been cut, but lumber still constitutes about 70 per cent of the defendant's total traffic, and of this 70 per cent about 40 per cent is exported. Only about 5 per cent of its total export and import traffic is in commodities other than lumber. The defendant apprehends that within the next 15 or 20 years the available timber supply contiguous to its line will have become practically exhausted, and to meet this emergency it has been impressed with the necessity of developing its tonnage in other commodities. It has

therefore turned its attention, in aid of this plan, to building up a miscellaneous export tonnage, and in September, 1911, it entered into a contract with Corry & Company, cotton brokers and ship factors, for monthly sailings of vessels carrying miscellaneous freight from Gulfport to foreign ports. Corry & Company did not own a regular line of ships, but chartered tramp steamers as needed. That company gave bond of \$100,000 for the faithful performance of its part of the contract. The contract with Corry & Company, it may be noted, is no longer in effect. Nor is there now in effect a similar contract with anyone else.

In order to properly house and protect this miscellaneous traffic, much of which was cotton, cottonseed products, hardwood lumber, and other more or less perishable articles, it was necessary for the defendant to erect a warehouse on its wharf and to reserve sufficient space adjacent thereto for the handling of the warehouse freight. It was also considered necessary to promulgate a set of "Rules Governing Use of Gulf & Ship Island Railroad Co.'s Private Wharves, Gulfport, Miss.," which provide, in substance, that the use of the wharf is restricted to—

vessels engaged in regular service covering all classes of cargo,

this restriction being subject, however, to the proviso that vessels— chartered by an exporter to carry his, or its, full cargo exclusively, and not a cargo made up of parcels from various shippers (even to the ports covered by regular services), may be given berth space as may be arranged for.

They provide further that—

such portion or portions of the wharf as will be necessary for berth space for the regular line vessels mentioned herein shall, at the option and selection of the railroad company, be reserved exclusively for such regular line vessels, and that when space is needed for vessels in miscellaneous service other vessels—

whether loading is finished or unfinished, shall at once move therefrom and vacate the same at its own expense and permit the regular line vessel or vessels to occupy said reserved space and berth thereat.

These rules have not been filed with the Commission. A copy of them is said by the defendant to be given to the master of each ship, who is required to subscribe thereto. There is an apparent conflict in the testimony as to whether the master of the *Edderside* affixed his signature to the rules.

This preference of vessels engaged in miscellaneous service is said by the defendant to be essential to the success of its plan of increasing its volume of export miscellaneous freight, because, without assurance of prompt assignment of space for loading, vessels in miscellaneous freight service could not be induced to call at Gulfport.

It is explained that the offer of a contract of the kind in question was not confined to Corry & Company, but was, and still is, open to any reliable shipowner or other responsible party able to give the required bond and guarantee the necessary service. The only restriction in this respect was that such a contract would not be entered into with other parties with respect to traffic consigned to the foreign ports served by Corry & Company, unless possibly to some of the more important ports to which the volume of traffic could be shown to be sufficient to warrant an additional contract. The defendant looked upon Corry & Company, and others with whom it might have entered into contracts, as being in effect its soliciting agents for export traffic. In other words, the situation was that the defendant would not aid in the soliciting of freight for competing steamers to the Corry & Company ports, but would accord to other vessels the same preference in wharfage space as to the Corry & Company ships, even on traffic to the Corry & Company ports, provided they solicited their own freight. Corry & Company ships were only preferred with respect to miscellaneous cargo freight; if engaged to carry solid cargo traffic, those vessels would have been compelled, like the *Edderside* in this case, to wait their turn with other vessels engaged in a like service.

The complainant Gunderson further alleges that, even conceding the reasonableness and propriety of the defendant's wharf rules, his claim for reparation is valid, for another reason, upon the specific facts of this case. It appears that on the date the *Edderside* was ordered to vacate for the *Hova*, another berth to which it could have been assigned became available by the removal to a point farther inland of the vessel *Silver Wings*, and that, although application for this space was made by the master of the *Edderside*, it was refused and the space given to the steamer *Aydon*, which came into port after the *Edderside*. The *Aydon*, like the *Edderside*, carried lumber and was not, any more than the *Edderside*, entitled under the rules to preferential treatment. It was not a Corry & Company ship. The defendant preferred the *Aydon* because of the refusal of the master of the *Edderside* to move for the benefit of the *Hova* when first requested. As a further penalty for this refusal, the *Edderside's* name was placed at the bottom of the list of vessels awaiting wharfage space. The complainant contends that this action on the part of the defendant was not warranted by the rules.

The defendant refers to an offer of space to the *Edderside* alongside, and which would have permitted of loading over, another vessel. It states that loading over another vessel is not an unusual procedure. It refers to an offer also of another berth, conditioned upon the *Edderside* moving its jib boom from certain space over

which it projected in a manner objectionable to the defendant. As we understand it, neither of these assignments was as desirable as that given to the *Aydon*.

The question of our jurisdiction has been discussed in the briefs. The case, we think, is controlled in principle by *Mobile Chamber of Commerce v. M. & O. R. R. Co.*, 23 I. C. C., 417. We find that we have jurisdiction.

It is unnecessary upon this record to pass definitely upon the lawfulness of purpose of the defendant's rules here in question. Aside from that issue the defendant has not shown that it was justified in preferring the *Aydon* and relegating the *Edderside's* name to the bottom of the list of waiting vessels. We find no warrant for that action under these rules, and hold that it was unreasonable.

As stated, the amount of the reparation claimed by the complainant Gunderson is based on the alleged value of the *Edderside* to him of \$90 a day plus \$10 paid by him for having the *Edderside* towed from and back to the wharf. The *Edderside* was chartered for this trip by the South American Shipping Company. Under the terms of the charter party for every day's detention of the *Edderside* due to the South American Shipping Company's default in loading a minimum of 30,000 superficial feet of lumber Gunderson was to receive \$90. It is stated by counsel for the complainant that this "demurrage is used as the basis to figure the reasonable hire." No testimony with respect to the measure of the complainant's damage other than a mere reference to the clause of the charter party referred to is submitted. The complainant's only witness was the forwarding agent of this lumber at Gulfport. We can not accept the record as thus made as affording a satisfactory basis for reparation.

We find that by reason of the defendant's action as aforesaid demurrage accrued as alleged in the petition of the complainant Crossley in Sub-No. 1, and that under the circumstances the imposition of these charges was unreasonable and should be refunded.

The record does not satisfactorily show that Crossley is the party entitled to the refund. The forwarding agent of this lumber at Gulfport, who was also Crossley's only witness, testified that he paid the demurrage as the agent of Crossley. The expense bills are made out against the Great Southern Lumber Company, care of this witness. The witness stated that Crossley bought the lumber from the Great Southern Lumber Company.

These cases will be held open for 30 days from the date of service of this report, within which the complainants may petition, if they desire, for further hearing on the question of reparation.

As now framed, the defendant's rules lack the degree of definiteness and clearness required by the act. They are indefinite, for instance, in the description of the vessels preferred. At the hearing the complainants raised the question whether the Corry & Company ships were "vessels engaged in regular service." They are indefinite also in the wide discretion vested in the defendant in the assignment of space for all, and between vessels engaged in the solid cargo service, and in the determination of the amount of preferred space required for vessels engaged in miscellaneous service; all of which may conduce to undue preferences and discriminations. We shall expect the rules to be revised to conform to the standard set by the act in these respects. We shall expect them also to be filed with the Commission. They may again be called into question, if need be, in another proceeding.

In connection with the complaint of the Gress Manufacturing Company in Sub-No. 2, the complainant's counsel asks leave to amend, stating that the present complaint is based upon a misconception of the real facts in the case. This application is granted, with the understanding that the amended complaint is to be filed within the 30-day period mentioned in connection with the other two cases.

39 I. C. C.

No. 7235.¹
TREXLER LUMBER COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted January 7, 1916. Decided May 29, 1916.

Complaints alleging that because of misrouting by defendants, unreasonable and unlawful charges were assessed for the transportation of various carloads of lumber shipped in 1910 and 1911 from various points in South Carolina and Georgia to points in New Jersey and New York, dismissed because not filed within two years after the causes of action accrued, nor within a reasonable time after notice to complainants that the claims could not be adjusted informally.

John R. Walker and Erie E. Ebert for complainants.

R. Walton Moore and Edwin C. Blanchard for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Harry C. Trexler and Fred H. Sterner, copartners, engaged in the wholesale lumber business under the firm name of Trexler Lumber Company, with their principal office at Allentown, Pa. By complaints, filed August 20, 1914, and September 21, 1914, they allege that because of misrouting by defendants unreasonable and unlawful charges were assessed for the transportation of certain carloads of lumber shipped in 1910 and 1911 from various points in South Carolina and Georgia to points in New Jersey and New York. Reparation is asked.

All of the shipments involved moved between February 23, 1910, and March 29, 1911. The claims were presented on our informal and special dockets on various dates between January 22, 1912, and July 13, 1912. Complainants were notified on various dates between May 17, 1912, and July 25, 1913, that the claims could not be disposed of informally. Formal complaints were received July 17, 1914, but were returned to complainants. They were filed again on August 20, 1914, and September 21, 1914.

The claims were not presented formally within two years after the causes of action accrued nor within a reasonable time after com-

¹ The proceeding also embraces complaints in—No. 7235 (Sub-No. 1), *Same v. Same*; No. 7235 (Sub-No. 2), *Same v. Same*.

plainants were advised that they could not be adjusted informally and must therefore be held to have been abandoned. See *Dillon Coal & Transfer Co. v. O. S. L. R. R. Co.*, 28 I. C. C., 91; *Rule III of Rules of Practice*.

Complainants explain that practically the same issues were involved in other cases before the Commission, which they expected to be determined in their favor, and that they presented the instant claims formally only when the other cases were decided adversely. However, this explanation affords no ground for an exception to the rule cited.

The shipments in Docket No. 7235 were routed by the shippers by way of the Pennsylvania Railroad and were delivered by the Southern Railway, the initial carrier, to the Philadelphia, Baltimore & Washington Railroad at Potomac Yard, Va. Complainants contend that delivery should have been made to the New York, Philadelphia & Norfolk Railroad at Pinnars Point, Va., by which route lower rates applied. Substantially similar complaints were dismissed in *Davidson Lumber Co. v. S. Ry. Co.*, Docket No. 4903, unreported; and *Forester Lumber Co. v. S. Ry. Co.*, Docket No. 5644, unreported, and nothing shown herein convinces us that our findings in these cases were erroneous or that a different conclusion would be warranted here.

The issues involved in Sub-Nos. 1 and 2 differ from those in No. 7235, but the statutory bar prevents consideration of these complaints on their merits.

The complaints will be dismissed.

39 I. C. C.

No. 7297.

WALTER R. KIRK

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF
TEXAS ET AL.

Submitted November 26, 1915. Decided May 29, 1916.

Charges collected by defendants for the transportation of one carload of grease from Dallas, Tex., to Mobile, Ala., and exported to Havana, Cuba, found to have been illegal to the extent that they exceeded those which would have accrued at the legal rate of 18 cents per 100 pounds. Reparation awarded.

William B. Moulton for complainant.

Edward D. Mohr for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in business at Chicago, Ill., as a broker, importer and exporter. By complaint, filed September 17, 1914, he alleges that defendants collected unreasonable charges on a carload of grease shipped in September, 1913, from Dallas, Tex., to Mobile, Ala., and exported to Havana, Cuba. Reparation is asked.

The shipment moved: Missouri, Kansas & Texas Railway Company of Texas to Houston, Tex.; Sunset Central lines to New Orleans, La.; Louisville & Nashville Railroad to destination. Freight charges were collected in the sum of \$125.86, at a domestic rate of 40 cents per 100 pounds on 31,466 pounds, plus icing charges of \$7 and a weighing charge of \$2, or an aggregate of \$134.86. An export rate of 18 cents per 100 pounds was contemporaneously in effect on grease, in carloads, over defendants' lines from Dallas to ship side at Mobile, which rate complainant contends should have been charged. The icing and weighing charges are not questioned.

The grease, which was consigned to complainant at Mobile, was purchased at Dallas for a customer in Havana, Cuba. Through inadvertence the shipper failed to indorse "for export" on the bill of lading, and the Louisville & Nashville Railroad held the shipment at Mobile awaiting instructions. Complainant has no branch house or representative at Mobile and the original bill of lading was for-

warded through its Chicago office to the Munson Steamship line to enable that company to secure delivery of the shipment at its docks. Defendants assumed that the shipment was originally a domestic shipment, and that the further movement was a reshipment or reconsignment. A joint tariff permitted reshipment or reconsignment under certain conditions, at the export rate to Mobile, but the Louisville & Nashville, by exception, refused to participate in this arrangement and therefore collected the domestic rate of 40 cents.

It is well settled that the character of a shipment and not the accidents of billing determine its nature, and the evidence shows clearly that the shipment was an export shipment from the outset. The rate legally applicable, therefore, was the export rate of 18 cents.

We find that the charges collected were illegal to the extent that they exceeded the charges that would have accrued at the legal rate of 18 cents per 100 pounds; that complainant made the shipment as described and paid and bore charges thereon in the sum of \$125.86; that he was damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found lawful, and that he is entitled to reparation in the sum of \$69.22, with interest from September 27, 1913.

Dumurrage charges amounting to \$4 accrued on the shipment while the carriers awaited instructions at Mobile. These charges have not been paid and should be collected promptly.

An appropriate order will be entered.

39 I. C. C.

No. 7916.
INDIANA TRANSPORTATION COMPANY
v.
GRAND RAPIDS, HOLLAND & CHICAGO RAILWAY.

Submitted November 29, 1915. Decided June 6, 1916.

Upon petition for the establishment of through routes and joint rates and for a physical connection between petitioner's water line and defendant's rail line, and for proportional rates from the port to which traffic is brought by petitioner; *Held*, That the evidence fails to show such public necessity for the route and rates asked for as to warrant the exercise of the authority granted by the act to regulate commerce. Complaint dismissed.

Charles Conradis and Arthur B. Hayes for complainant.
Dickema, Kollen & Ten Cate for defendant.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

Complainant, a corporation under the laws of the state of Indiana, operating a line of boats for the transportation of freight and passengers on Lake Michigan, between Chicago, Ill., and Saugatuck, Mich., asks in this proceeding that the defendant be required to join with complainant in the construction and maintenance of a physical connection at Saugatuck, and for the establishment of through routes and joint rates on interstate traffic over such connection to all points on defendant's line, and that proportional rates be established from the port of Saugatuck to points on the line of defendant. The complainant now has joint rates with connections at Chicago and files its tariffs with this Commission, makes reports thereto, and otherwise subjects itself to the jurisdiction of the Commission.

Defendant, an electric railroad engaged in interstate commerce, owns and operates a railroad for the transportation of freight and passengers between Holland, Mich., a port on Lake Michigan, and Grand Rapids, Mich., and over a branch line between Holland and Saugatuck. Defendant now has physical connection at Holland and Interurban pier with the Graham & Morton boat line operating between Holland and Chicago.

By existing through routes traffic from Chicago moves over the Graham & Morton boat line to Interurban pier near Holland, a distance by water of about 98 miles; thence over the line of the de-

defendant to Grand Rapids, a farther distance of $32\frac{1}{2}$ miles, and to Saugatuck by the branch line from Interurban pier 11 miles. Were the through route asked for established the movement would be from Chicago by complainant's boat line to Saugatuck, 89 miles; thence over the 11-mile branch of defendant's line to Interurban pier; thence over defendant's main line $32\frac{1}{2}$ miles to Grand Rapids. The defendant railway has never paid any dividends and its branch line to Saugatuck is being operated at a loss. Its roadbed and track from Interurban pier to Grand Rapids are better than over its branch line, and its schedules have been made to fit the sailing and arriving time of the Graham & Morton line. Expensive and adequate terminals and connections exist at Holland and Interurban pier.

Both complainant and the Graham & Morton line have adequate facilities at Chicago for the receipt, delivery, and interchange of traffic, although the facilities for the receipt and delivery of freight of the Graham & Morton line are somewhat more convenient to teamsters than are those of the complainant.

Through routes between Chicago and these Michigan points now exist to all points which would be reached by the proposed through route, and complainant does not attack the reasonableness of existing joint rates nor does it present any testimony seeking or tending to show that lower joint rates should be made over the proposed route than the existing joint rates over the present route. Defendant shows that the cost of the service to it would be greater over the proposed route than over the existing route. No testimony was offered upon which to base a finding as to the amount of the proportional rates from Saugatuck, and the prayer for proportional rates seems in effect to have been abandoned.

Complainant owns no dock at Saugatuck, but has a lease for the use of part of a dancing pavilion which it uses. This lease expires in 1916, and it appears that the amusement company which owns the pier has gone into bankruptcy. It was shown, however, that a renewal of the lease could probably be obtained. It is with this leased dock facility that a physical connection is asked. Complainant, while presenting a map of a proposed connection 145 feet long with a grade of 10 feet for that length, assumed that no burden rested upon it to furnish estimates of the cost thereof. Such cost as shown by defendant would be, if piling was found unnecessary, \$985, or, if piling was found necessary, \$1,485. Even at this cost the connection would be much less satisfactory than existing connections in Holland and to construct a fully adequate connection would require the expenditure of \$4,300.

In addition to the cost of constructing and operating the physical connection, to make practical such connection defendant would have to alter its schedule over its branch from Saugatuck to Holland or

Interurban pier and add other and larger equipment. It was not shown that any additional business would result were the prayer of the complainant granted. Complainant is not making more than operating expenses and the defendant is now losing money on its Saugatuck branch. The present service is satisfactory. To have a competing boat would be of some advantage to the points on defendant's line. The only advantage that would result to Saugatuck would be that business now transported by the Graham & Morton line would to some extent be transferred to complainant, thus making the continuance of a boat line to Saugatuck more certain. Such advantage to Saugatuck, and the increased traffic to complainant, would be at the expense of the defendant and the Graham & Morton line.

Our jurisdiction is not questioned and clearly exists under the Panama Canal act, but under the circumstances and conditions shown of record we are of opinion and find that there is not such a case presented as to warrant us in requiring the construction of connecting tracks of the dock used by complainant, nor to require the establishment of the through route or the proportional rates prayed for. The complaint will be dismissed.

No. 7457.
R. B. HOMER LUMBER COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted May 3, 1915. Decided May 29, 1916.

Following *Davidson Lumber Co. v. S. Ry. Co.*, Docket No. 4903, unreported;
Held, That a carload of pine lumber shipped from Blacksburg, S. C., to
Jersey City, N. J., was not misrouted. Complaint dismissed.

R. B. Homer for complainant in person.

E. C. Blanchard for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale lumber business with its headquarters at Baltimore, Md. By complaint, filed November 2, 1914, it alleges that because of misrouting by defendants unreasonable and unjustly discriminatory charges were assessed for the transportation of a carload of pine lumber from Blacksburg, S. C., to Jersey City, N. J. Reparation is asked.

The shipment was delivered to the Southern Railway, the initial carrier, June 16, 1913, routed by the shipper "P. R. R." No rate or junction point was inserted in the bill of lading. The rates on lumber, in carloads, from Blacksburg to Jersey City were 27 cents per 100 pounds over the Southern Railway and lines of the Pennsylvania system by way of Potomac Yard, Va., and 23 cents over the Southern Railway, the New York, Philadelphia & Norfolk Railroad and the lines of the Pennsylvania system by way of Pinner's Point, Va. The shipment was forwarded through Potomac Yard and was charged for at the 27-cent rate. Complainant contends that its routing instructions required movement through Pinner's Point.

The actual movement complied with the only routing instructions shown on the bill of lading. Complainant urges that these instructions meant Pennsylvania Railroad delivery, but in that case the shipper was careless in the use of words and defendants can not be held responsible. *North State Lumber Co. v. S. Ry. Co.*, 39 I. C. C., 409. There is no evidence that the rate charged was unreasonable or unjustly discriminatory for the service performed, and the complaint will be dismissed.

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

4305. *TRANSPORTATION BUREAU OF THE CITY OF WICHITA v. A., T. & S. F. RY. Co.* Class rates from Wichita and Hutchinson, Kans., to Colorado common points. *A. E. Helm* for complainant. *T. J. Norton, J. R. Koontz, F. J. Shubert, H. G. Herbel, and F. G. Wright* for defendants. Dismissed on request of complainant, May 23, 1916.

7006. *TUSCALOOSA BOARD OF TRADE v. A. G. S. R. R. Co.* Class and commodity rates from New Orleans, La., to Tuscaloosa, Ala. *J. J. Jackson* for complainant. *M. C. Hall and N. M. Proctor* for defendants. Dismissed without prejudice, May 10, 1916.

7103. *TUSCALOOSA BOARD OF TRADE v. M. P. RY. Co.* Rates on certain commodities from various Ohio and Mississippi River crossings, and points in Kansas and Tennessee, to Tuscaloosa, Ala. *J. J. Jackson* for complainant. *Brown & Eastin, W. A. Colston, W. A. Northcutt, T. Bond, R. W. Moore, H. G. Herbel, and F. G. Wright* for defendants. Dismissed without prejudice, May 10, 1916.

7452. *PALMER & SEMANS LUMBER Co. v. B. & O. R. R. Co.* Rates on lumber from Ursina Junction, Pa., to Shawmut, N. Y. *J. D. Coplan* for complainant. *W. C. Coleman* for the B. & O. R. R. Co. Dismissed on request of complainant, May 1, 1916.

8064. *UNION CITY HOOP & LUMBER Co. (INC.) v. C., H. & D. RY. Co.* Rates on logs from Fountaintown, Ind., to Union City, Ind. *R. B. Coapstick* for complainant. *C. Phares and J. C. Northlane* for defendants. Dismissed on request of complainant, May 1, 1916.

8417. *TULSA TRAFFIC ASSO. v. A., T. & S. F. RY. Co.* Rates on scrap iron and secondhand pipe from St. Louis, Mo., to Tulsa, Okla. *E. N. Adams* for complainant. *T. Bond, W. M. Powers, and R. D. Williams* for defendants. Dismissed on request of complainant, May 1, 1916.

8440. *GREGORY VINEGAR Co. v. K. C. S. RY. Co.* Rates on cider vinegar from Siloam Springs, Ark., to Paris, Tex. *O. L. Gregory* for complainant. *T. Bond and J. M. Souby* for defendants. Dismissed on request of complainant, May 16, 1916.

8455. *DELAWARE PUNCH Co. OF TEXAS v. G., H. & S. A. RY. Co.* Change in classification on flavoring sirup from fourth to second class between San Antonio, Tex., and points in Louisiana, Arizona, and New Mexico. *J. C. Rice* for complainant. *D. H. Wood, Denegre, Leovy & Chaffe, F. H. Wood, Baker, Botts, Parker & Garwood, C. H. Bates, C. W. Durbrow, and G. D. Squires* for defendants. Dismissed on request of complainant, May 1, 1916.

8506. *DUQUESNE COAL & COKE Co. v. W.-T. T. RY. Co.* Rates on bituminous coal from Avalla district, Pa., to points in Ohio, Michigan, Indiana, Illinois, and Canada, and also to Lake Erie ports when for transshipment. *R. D. Jenks* for complainant. *C. F. C. Arensberg and W. W. Collins, jr.,* for defendants. Dismissed on request of complainant, May 8, 1916.

8650. *LA CROSSE SHIPPERS' ASSO. v. C., ST. P., M. & O. RY. Co.* Rates on scrap paper from La Crosse, Wis., to Minnesota Transfer, Minn. *S. J. Bolton and W. W. West* for complainant. *J. B. Sheean, C. C. Wright, and R. H. Widdicombe* for defendants. Dismissed on request of complainant, May 1, 1916.

8716. *WOOLMAN & Co. v. P. R. R. Co.* Rates on shipment of hay from *Haleys, Canada*, to Southport, N. Y., reconsigned to Baltimore, Md. *S. C. Woolman* for complainant. No appearance for defendants. Dismissed on request of complainant, May 16, 1916.

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7016. *BRENNER LUMBER Co. v. M. L. & T. R. R. & S. S. Co.* May 16, 1916. Reparation for \$285.88 on shipments of logs milled in transit at Alexandria, La., on account of unreasonable charges.

7265. *HOSSEFOUS v. P., C., C. & St. L. Ry. Co.* May 16, 1916. Reparation for \$15.83 on shipments of logs from Cambridge City, Ind., to Dayton, Ohio, on account of unreasonable charges.

7808. *STANDARD PAINT Co. v. S. P. Co. et al.* May 16, 1916. Reparation for \$850.68 on shipments of liquid asphaltum from Paraffin, Cal., to Chicago Heights, Ill., on account of unreasonable charges.

7194. *LIPPARD-STEWART MOTOR CAR Co et al. v. M. C. R. R. Co. et al.* May 16, 1916. Reparation for \$149.60 on shipments of motor delivery cars from Black Rock, Buffalo, N. Y., to Portland, Oreg., on account of unreasonable charges.

7360. *REYNOLDS TOBACCO Co. v. N. & W. Ry. Co. et al.* May 16, 1916. Reparation for \$235.82 on shipments of glass jars from Glassport, Pa., to Winston-Salem, N. C., on account of unreasonable rate.

7084. *KNIGHT MERCANTILE Co. v. WAB. R. R. Co. et al.* May 16, 1916. Reparation for \$56.85 on shipments of motorcycles from Chicago, Ill., to St. Louis, Mo., on account of unreasonable charges.

6909. *BRENNER LUMBER Co. v. M. L. & T. R. R. & S. S. Co.* May 16, 1916. Reparation for \$431.39 on shipments of logs milled in transit at Alexandria, La., on account of unreasonable charges.

6793. *BRENNER LUMBER Co. v. M. L. & T. R. R. & S. S. Co.* May 16, 1916. Reparation for \$679.40 on shipments of logs from Barbreck and Gold Dust, La., to Alexandria, La., and subsequently reshipped to New Orleans, La., for export and to interstate destinations, on account of unreasonable rates.

6824. *RADFORD-PORTSMOUTH VENEER Co. v. N. & W. Ry. Co. et al.* May 16, 1916. Reparation for \$213.31 on shipments of veneering from East Radford, Va., to New England points, on account of unreasonable charges.

7535. *BIRDSBORO STONE Co. v. P. R. R. Co. et al.* May 16, 1916. Reparation for \$334.72 on shipments of road stone from Monocacy, Pa., to various points in Delaware, on account of unreasonable charges.

NOTE.—The amount of reparation awarded in above cases aggregates \$3,253.48.

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- BARS, SIDE. Macon, Ga., to Dayton, Ohio, 625.
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- BLOCKS, ROUGH MARBLE:
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St. Paul, Minn., from New York, N. Y., Baltimore, Md., and Knoxville and other Tennessee points, 392.
- BLOOD, GROUND DRIED. Milwaukee, Wis., to Wilmington, N. C., 171.
- BOILER TUBES. *See* TUBES.
- BOLTS, HARDWOOD. Arkansas to Memphis, Tenn., 303.
- BOLTS, IRON. Macon, Ga., to Dayton, Ohio, 625.
- BOLTS, STAVE. Louisiana to Alexandria, La., milled, and reshipped to Rochester, N. Y., and Constable Hook, N. J., 553.
- BRICK. Mechanicville and Lansingburgh, N. Y., and Gonic, N. H., to Boston, Mass., and other points in New England and trunk-line territories, and Montreal, Canada, 118.
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- BRICK, PAVING:
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- BRIMSTONE. North Atlantic ports to C. F. A. territory, 349.
- BRINE, KRAUT. Saginaw, Mich., to California, Washington, Colorado, Texas, and Oklahoma City, Okla., 622.
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- CARS, EMPTY REFRIGERATOR.** Toledo, Ohio, to Rose Center, Mich., 589.
- CARTRIDGES, METALLIC.** Bridgeport, Conn., to Monroe, La., 561.
- CASTINGS.** Milton, Fla., from Milwaukee, Wis., and Cleveland, Ohio, 470.
- CASTINGS, IRON.** Macon, Ga., to Dayton, Ohio, 625.
- CATSUP.** Keokuk, Iowa, to St. Louis, Mo., 629.
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- COAL, ANTHRACITE:**
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IRONS, CAST-IRON DOG. Rome, Ga., to Memphis, Tenn., 513.

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 Blocton, Ala., to Kosciusko, Miss. Bituminous coal, 378.
 Bluefield, W. Va., to Greensboro, N. C., reconsigned to Greenville, S. C. Coke, 218.
 Bluefield, W. Va., from Ironton, Ohio. Grain, grain products, and hay, 433.
 Bonham, Tex., to Boston, Mass., and New York, N. Y. Cotton piece goods; fourth section, 399.
 Bonners Ferry, Idaho, to Montana. Lumber, 568.
 Boston, Mass., from Henderson, Ky. Cotton piece goods, 399.
 Boston, Mass., from Mechanicville and Lansingburgh, N. Y., and Gonic, N. H. Brick, 118.
 Boston, Mass., from Provincetown, East Brewster, and North Truro, Mass., destined to Harlem River, N. Y. Fresh and frozen fish, 333.
 Bowie, La., to Eureka, Tex. Hewn cypress cross-ties, 609.
 Bradley, Ill., from Forrester, Ala., dressed in transit at Columbus, Miss. Lumber, 337.
 Breckenridge, Colo., to Bartlesville and Collinsville, Okla., via Denver. Zinc concentrates, 202.
 Brenham, Tex., to Boston, Mass., and New York, N. Y. Cotton piece goods; fourth section, 399.

- Bridgeport, Conn., to Monroe, La. Loaded shells and metallic cartridges, 561.
- Brilliant, Ala., to Kosciusko, Miss. Bituminous coal, 378.
- Bristol, Wash., to North and South Dakota, Nebraska, Kansas, Missouri, Colorado, Idaho, Montana, Utah, Wyoming, Oregon, New Mexico, Texas, Oklahoma, and Louisiana. Lumber, 188.
- Broken Bow, Okla., from Shreveport, La. Class rates, 296.
- Brooklyn, N. Y., from Gonic, N. H. Brick, 118.
- Brunswick, Ga., to Dothan, Ala. Cyanamid, 476.
- Buffalo, Kans., to Lincoln, Nebr. Paving brick, 211.
- Buffalo, Kans., to Marianna, Ark. Paving brick, 208.
- Buffalo, N. Y. Transfer of anthracite coal from open cars to box cars, 339.
- Buffalo, N. Y. Transit regulations on grain, 580.
- Burguières, La., to Kansas City, Mo. Blackstrap molasses, 483.
- Bynum, Tex., from Raton and other New Mexico points. Coal, 617.
- Cadillac, Mich., to Chicago, Ill., and Kenosha, Racine, Milwaukee, and Manitowoc, Wis. Lumber, 367.
- California from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
- California to various destinations in other States and Canada. Oranges, 88.
- Camden, Ark., to and from Memphis, Tenn. Class and commodity rates, 256.
- Canada, from Aetna, Ind., destined to Concord Junction, Mass. Dynamite, 199.
- Canada from California. Oranges, 88.
- Canada from Kentucky mines. Coal, 449.
- Canada from South River, N. J. Enameled brick, 653.
- Canton, Ga., to Knoxville, Tenn. Cotton denims, 330.
- Carroll, Iowa, to Omaha, Nebr. Agricultural implements, 556.
- Carrollton, Ky., to Memphis, Tenn., and Helena, Ark. Whisky, 459.
- Cedar Rapids, Iowa, from Marion, Ill. Bituminous coal, 415.
- Central freight association territory from Atlantic seaboard territory. Oysters; icing, 690.
- Central freight association territory from Houston, Tex. Brewers' rice, 149.
- Central freight association territory to Marshall and Jefferson, Tex. Class and commodity rates, 249.
- Central freight association territory from North Atlantic ports. Crude sulphur and brimstone, 349.
- Central freight association territory from North Atlantic ports, Gulf ports, and points in Georgia. Clay, 132.
- Central freight association territory from South River, N. J. Enameled brick, 653.
- Chattanooga, Tenn., from Cincinnati, Ohio. Iron and steel articles, 569.
- Chattanooga, Tenn., to Valdosta, Ga. Hollow fireproof building tile, 615.
- Cheboygan, Mich., from Baltimore, Md. Sulphur; fourth section, 349.
- Chicago, Ill., to Atlantic seaboard, for export. Grain, 643.
- Chicago, Ill., to Concordia, Kans. Through rates, 675.
- Chicago, Ill., from Duluth, Minn., milled in transit at Anoka, Minn. Durum wheat, 353.
- Chicago, Ill., from Forrester, Ala., dressed in transit at Columbus, Miss. Lumber, 337.
- Chicago, Ill., from Galveston, Tex. Brewers' rice, 149.
- Chicago, Ill., to Louisville, Ky., reshipped to Virginia. Wheat, 335.
- Chicago, Ill., from Madison, Wis. Iron-working machinery, 147.
- Chicago, Ill., to Memphis, Tenn. Whisky, 459.
- Chicago, Ill., from Michigan and Wisconsin. Lumber, 367.
- Chicago, Ill., from New York, N. Y., and other North Atlantic ports. Crude sulphur and brimstone, 349.

- Chicago, Ill., from New York, Philadelphia, New Orleans, and points in Georgia Clay, 132.
- Chicago, Ill., from St. Charles and Appalachia districts, Va. Coal and coke, 523.
- Chicago, Ill., from St. Joseph, Mo., for beyond. Fresh meats, packing-house products, and green salted hides, 417.
- Chicago, Ill., to San Francisco, Cal. Women's untrimmed hats, 411.
- Chicago, Ill., to Seattle, Wash. Spring delivery wagon, 611.
- Chicago, Ill., to western classification territory. Cigar signs, 737.
- Chicago Heights, Ill., to Daytona, Fla. Roofing tile and accessories, 407.
- Chicago switching district from Indiana. Sand, 321.
- Cincinnati, Ohio, to Chattanooga, Tenn. Iron and steel articles, 569.
- Cincinnati, Ohio, from Houston, Tex. Brewers' rice, 149.
- Cincinnati, Ohio, to Memphis, Tenn. Whisky, 459.
- Cincinnati, Ohio, from New York, Philadelphia, New Orleans, and points in Georgia Clay, 132.
- Cincinnati, Ohio, from St. Charles and Appalachia districts, Va. Coal and coke, 523.
- Cincinnati, Ohio, to Winston-Salem, N. C., and South Boston, Martinsville, and Danville, Va. Leaf tobacco; fourth section, 600.
- Cle Elum, Wash., to North and South Dakota, Nebraska, Kansas, Missouri, Colorado, Idaho, Montana, Utah, Wyoming, Oregon, New Mexico, Texas, Oklahoma, and Louisiana. Lumber, 188.
- Cleburne, Tex., from Raton and other New Mexico points. Coal, 617.
- Cleveland, Ohio, to Milton, Fla., Castings, 470.
- Cleveland, Ohio, from New York, Philadelphia, New Orleans, and points in Georgia Clay, 132.
- Cleveland, Ohio, to San Francisco, Cal. Women's untrimmed hats, 411.
- Coffeyville, Kans., to Lincoln, Nebr. Paving brick, 211.
- Coleman, Fla., to New York, N. Y. Cabbage, 563.
- Colfax, La., to Alexandria, La., milled, and reshipped to Rochester, N. Y., and Constable Hook, N. J. Stave bolts, 553.
- Collinsville, Okla., from Breckenridge, Colo., via Denver. Zinc concentrates, 202.
- Colorado from Leesville, La. Yellow-pine lumber, 125.
- Colorado from Michigan and Ohio. Salt, 426.
- Colorado from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
- Colorado from Washington. Lumber, 188.
- Colorado common points from Oklahoma. Cottonseed cake, meal and hulls, 497.
- Columbus, Ga., from North Fort Worth, Tex., and East St. Louis, Ill., stopped in transit at Montgomery, Ala., for partial unloading. Fresh meats and packing-house products, 701.
- Columbus, Miss., from Forrester, Ala., reshipped to Bradley and Chicago, Ill., and Milwaukee, Wis. Lumber, 337.
- Columbus, Ohio, from Jersey City, N. J. Burlap bags, 222.
- Columbus Junction, Iowa, from Merom, Ind. Mussel shells, 627.
- Concord Junction, Mass., from Aetna, Ind., via Canada. Dynamite, 199.
- Concordia, Kans., to St. Louis, Mo. Butter, eggs, and dressed poultry, 675.
- Concordia, Kans., from St. Louis, Mo., New Orleans, La., Beaumont and Fort Worth, Tex., Louisville, Ky., and Baltimore, Md. Class and commodity rates, 675.
- Connecticut from Norman, N. C. Lumber, 456.
- Constable Hook, N. J., from Alexandria, La. Stave bolts, 553.
- Cooledge, Tex., from Raton and other New Mexico points. Coal, 617.
- Cortland, N. Y., to Hopkinsville, Ky. Iron wire cloth, 568.
- Covington, Ky., from Edgar and Okahumpka, Fla. Clay, 663.
- Creighton, Pa., from West Virginia. Lumber, 661.

- Crews, La., to Alexandria, La., milled, and reshipped to Rochester, N. Y., and Constable Hook, N. J. Stave bolts, 553.
- Crossett, Ark., to and from Memphis, Tenn. Class and commodity rates, 256.
- Cypremort, La., to Kansas City, Mo. Blackstrap molasses, 483.
- Dallas, Tex., to Mobile, Ala., exported to Habana, Cuba. Grease, 755.
- Dallas, Tex., from New Orleans, La. Bananas, 725.
- Dallas, Tex., from Saginaw, Mich. Kraut brine, kraut, and pickles, 622.
- Danville, Ill., from St. Charles and Appalachia districts, Va. Coal and coke, 523.
- Danville, Va., from Kentucky. Leaf tobacco, 600.
- Dayton, Ohio, from Macon, Ga. Iron articles, 625.
- Dayton, Ohio, from New York, Philadelphia, New Orleans, and points in Georgia. Clay, 132.
- Dayton, Ohio, from St. Charles and Appalachia districts, Va. Coal and coke, 523.
- Daytona, Fla., from Chicago Heights, Ill. Roofing tile and accessories, 407.
- DeQueen, Ark., from Stevenson, La. Second-hand sawmill machinery, 215.
- Delaware from Norman, N. C. Lumber, 456.
- Denver, Colo., from Breckenridge, Colo., destined to Bartlesville and Collinsville, Okla. Zinc concentrates, 202.
- Denver, Colo., from International Falls, Minn. News print paper, 481.
- Denver, Colo., from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
- Detroit, Mich. Transit regulations on grain, 580.
- Detroit, Mich., to Marshall, Tex. Gas stoves, 597.
- Detroit, Mich., from New York, Philadelphia, New Orleans, and points in Georgia. Clay, 132.
- Detroit, Mich., from St. Charles and Appalachia districts, Va. Coal and coke, 523.
- Detroit, Mich., to San Francisco, Cal. Women's untrimmed hats, 411.
- Devon, W. Va., from Ironton, Ohio. Grain, grain products, and hay, 433.
- District of Columbia from Norman, N. C. Lumber, 456.
- Dothan, Ala., from Savannah and Brunswick, Ga. Cyanamid, 476.
- Duluth, Minn., to Anoka, Minn., milled, and reshipped to Chicago, Ill. Durum wheat, 353.
- Dunbar, Nebr., from Galesburg, Ill. Iron and wood fence gates, 744.
- Dundee, Ill., from St. Louis, Mo. Pine lumber, 670.
- Durant, Okla., from Shreveport, La. Class rates, 296.
- East Brewster, Mass., to Harlem River, N. Y., via Boston. Fresh and frozen fish, 333.
- East Liverpool, Ohio, from New York, Philadelphia, New Orleans, and points in Georgia. Clay, 132.
- East St. Louis, Ill., to Columbus, Ga., stopped in transit at Montgomery, Ala., for partial unloading. Fresh meats and packing-house products, 701.
- East St. Louis, Ill., from Jersey City, N. J. Burlap bags, 222.
- East St. Louis, Ill., from Magdalena, N. Mex. Zinc ore, 635.
- Eastern territory to Willamette Valley points, and Portland, Oreg., via the Ogden, Utah, and Roseville, Cal., gateways. Class and commodity rates, 193.
- Eastern trunk line territory. Stoppage in transit on farm wagons, 731.
- Eastern trunk line territory from Gonic, N. H. Brick, 118.
- Eastern trunk line territory from South River, N. J. Enameled brick, 653.
- Easton, Wash., to North and South Dakota, Nebraska, Kansas, Missouri, Colorado, Idaho, Montana, Utah, Wyoming, Oregon, New Mexico, Texas, Oklahoma, and Louisiana. Lumber, 188.
- Edgar, Fla., to Covington, Ky. Clay, 663.
- El Dorado, Ark., to and from Memphis, Tenn. Class and commodity rates, 256.
- Elgin, Oreg., to Montana, North and South Dakota, Minnesota, and Nebraska. Lumber and products, 316.
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- Elizabeth, N. J., from Gonic, N. H. Brick, 118.
 Emden, La., to Alexandria, La., milled, and reshipped to Rochester, N. Y., and Constable Hook, N. J. Stave bolts, 553.
 Eureka, Tex., from Bowie, La. Hewn cypress crossties, 609.
 Evansville, Ind., from Cortland, N. Y. Iron wire cloth; fourth section, 598.
 Fernandina, Fla., to other Florida points. Imported kainit, 660.
 Florida to Covington, Ky. Clay, 663.
 Florida from Fernandina, Fla. Imported kainit, 660.
 Florida to Madisonville, Ohio. Lumber, 592.
 Florida to New York, N. Y. Cabbage, 563.
 Forrester, Ala., to Chicago and Bradley, Ill., and Milwaukee, Wis., dressed in transit at Columbus, Miss. Lumber, 337.
 Fort Collins, Colo., from Jersey City, N. J. Burlap bags, 222.
 Fort Wayne, Ind., from St. Charles and Appalachia districts, Va. Coal and coke, 523.
 Fort Worth, Tex., from Kansas. Salt, 665.
 Fox River group from Sulphur Mines, La. Sulphur, 360.
 Frankfort, Ky., to Memphis, Tenn. Whisky, 459.
 Fulton, Mo., from Omaha, Nebr. Coarse grain and alfalfa feed, 485.
 Galesburg, Ill., to western territory. Iron and wood fence gates, 744.
 Gallup, N. Mex., from St. Louis, Mo. Paper bags and wrapping paper, 631.
 Galveston, Tex., from Arkadelphia and Ashdown, Ark. Oak and gum staves, and heading, 573.
 Galveston, Tex., to Chicago, Ill., and Indianapolis, Ind., and other interior points. Brewers' rice, 149.
 Georgia to C. F. A. territory. Clay, 132.
 Georgia to New Jersey and New York. Lumber, 753.
 Glasgow, Mont., from Oregon. Lumber, 316.
 Glassboro, Pa., from West Virginia. Lumber, 661.
 Glencoe, Mo., from Illinois mines. Bituminous coal, 190.
 Glendive, Mont., from Oregon. Lumber, 316.
 Gonic, N. H., to Boston, New York, Philadelphia, and Baltimore, and other points in eastern trunk-line territory. Brick, 118.
 Gould, Okla., from Hickory Canon, Colo. Coal, 491.
 Graham, Va., from Ironton, Ohio. Grain, grain products, and hay, 433.
 Grand Forks, N. Dak., from Oregon. Lumber, 316.
 Grand Rapids, Mich., from St. Charles and Appalachia districts, Va. Coal and coke, 523.
 Grant, Okla., from Shreveport, La. Class rates, 296.
 Grasselli, Ala., to Morganton, N. C. Sulphuric acid, 478.
 Greensboro, N. C., from Pocahontas, Va., reconsigned to Greenville, S. C. Coke, 312.
 Greenville, Miss., from Alabama mines. Bituminous coal, 378.
 Greenville, S. C., from Pocahontas, Va., reconsigned at Greensboro, N. C. Coke, 312.
 Gulf of Mexico from Illinois, Kentucky, Tennessee, and Alabama mines. Bituminous coal, 378.
 Gulf ports from Atlantic seaboard territory, destined to Ruston, La. Class and commodity rates, 287.
 Gulf ports to C. F. A. territory. Clay, 132.
 Gulf ports from Illinois, Kentucky, Tennessee, and Alabama mines. Bituminous coal, 378.
 Gulf ports from St. Joseph, Mo., for export. Harness and saddlery, 697.
 Gulfport, Miss. Wharfage rules, 747.
 Hamilton, Ohio, from Edgar and Okahumpka, Fla. Clay; fourth section, 663.

- Harlem River, N. Y., from Provincetown and other Massachusetts points, via Boston. Fresh and frozen fish, 333.
- Harvey, Ill., from Attica, Ind. Paving brick, 517.
- Havana, Cuba, from Mobile, Ala., originating at Dallas, Tex. Grease, 755.
- Helena, Ark., from Kentucky, Indiana, Pittsburgh, Pa., Lynchburg, Ohio, and Nashville, Tenn. Whisky, 459.
- Helena, Ark., from New York, N. Y., and Baltimore, Md. Whisky; fourth section, 459.
- Helena, Mont., from South River, N. J. Enameled brick, 653.
- Henderson, Ky., to Boston, Mass., Norwich, Conn., Providence, R. I., New York, N. Y., Baltimore, Md., and other points in trunk line territory. Cotton piece goods, 399.
- Hickman, Ky., from Illinois, Tennessee, and Kentucky mines. Bituminous coal, 378.
- Hickory Canon, Colo., to Gould, Okla. Coal, 491.
- Hillsboro, Tex., from Raton and other New Mexico points. Coal, 617.
- Hoffman, N. C., to McDonoughs, N. J. Lumber, 487.
- Hopefield, Ark., to and from Memphis, Tenn. Bridge tolls, 256.
- Hopkinsville, Ky., from Cortland, N. Y. Iron wire cloth, 566.
- Houston, Tex., from Arkadelphia and Ashdown, Ark. Oak and gum staves, and heading, 573.
- Houston, Tex., to C. F. A. territory, and points in Illinois. Brewers' rice, 149.
- Houston, Tex., to north Pacific coast points. Clean rice, 149.
- Houston, Tex., from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
- Howe, Okla., to Plainview, Ark. Used steel car trucks, 475.
- Huff, Pa., from West Virginia. Lumber, 661.
- Hugo, Okla., from Shreveport, La. Class rates, 296.
- Idabel, Okla., from Shreveport, La. Class rates, 296.
- Idaho from Washington. Lumber, 188.
- Illinois from Houston, Tex. Brewers' rice, 149.
- Illinois to Memphis, Tenn. Whisky, 459.
- Illinois from Michigan and Wisconsin. Lumber, 367.
- Illinois from St. Charles and Appalachia districts, Va. Coal and coke, 523.
- Illinois mines to Glencoe and other Missouri points. Bituminous coal, 190.
- Illinois mines to Kansas City and other Missouri points. Bituminous coal, 520.
- Illinois mines to Mississippi River, Gulf of Mexico, and points in interior Mississippi Valley territory. Bituminous coal, 378.
- Independence, Kans., to Monticello, Ark. Paving brick, 208.
- Indiana to Chicago switching district. Sand, 321.
- Indiana to Helena, Ark. Whisky, 459.
- Indiana from Michigan and Wisconsin. Lumber, 367.
- Indiana from St. Charles and Appalachia districts, Va. Coal and coke, 523.
- Indiana-Illinois state line, points east of, to Concordia, Kans., via St. Louis, Mo. Class and commodity rates, 675.
- Indiana mines to Kansas City and other Missouri points. Bituminous coal, 520.
- Indianapolis, Ind., from Galveston, Tex. Brewers' rice, 149.
- Indianapolis, Ind., from New York, Philadelphia, New Orleans, and points in Georgia. Clay, 132.
- Indianapolis, Ind., from St. Charles and Appalachia districts, Va. Coal and coke, 523.
- International Falls, Minn., to Denver, Colo. News print paper, 481.
- Iowa from Galesburg, Ill. Iron and wood fence gates, 744.
- Iowa from Oak Hills, Colo. Bituminous coal, 94.
- Iowa from Oklahoma. Cottonseed cake, meal, and hulls, 497.

Ironton, Ohio, to West Virginia. Grain, grain products, and hay, 433.
 Ivorydale, Ohio, to South Bend, Ind. Candle pitch, 489.
 Jackson, Tenn., from New Orleans, La. Spokes, 641.
 Jefferson, Tex., from New Orleans, St. Louis, Memphis, and points in C. F. A. and Atlantic seaboard territories. Class and commodity rates, 249.
 Jersey City, N. J., from Blacksburg, S. C. Pine lumber, 760.
 Jersey City, N. J., to Columbus, Ohio, East St. Louis and Waukegan, Ill., Terre Haute, Ind., Sweet Springs, Mo., Salina, Kans., and Fort Collins, Colo. Burlap bags, 222.
 Jersey City, N. J., from Gonic, N. H. Brick, 118.
 Jersey City, N. J., to St. Paul, Minn. Marble blocks, 392.
 Junction City, Ark., to and from Ruston, La. Class and commodity rates, 287.
 Kalamazoo, Mich., from New York, Philadelphia, New Orleans, and points in Georgia. Clay, 132.
 Kalamazoo, Mich., from St. Charles and Appalachia districts, Va. Coal and coke, 523.
 Kanopolis, Kans., to Fort Worth and North Fort Worth, Tex. Salt, 665.
 Kansas to Fort Worth and North Fort Worth, Tex. Salt, 665.
 Kansas from Galesburg, Ill. Iron and wood fence gates, 744.
 Kansas from Leesville, La. Yellow-pine lumber, 125.
 Kansas from Michigan and Ohio. Salt, 426.
 Kansas from Oak Hills, Colo. Bituminous coal, 94.
 Kansas from Oklahoma. Cottonseed cake, meal, and hulls, 497.
 Kansas from Washington. Lumber, 188.
 Kansas City, Mo., from Burguières, La. Blackstrap molasses, 483.
 Kansas City, Mo., from Illinois and Indiana mines. Bituminous coal, 520.
 Kansas City, Mo., from Knoxville and other Tennessee points. Marble blocks, 392.
 Kansas City, Mo., from Oklahoma. Cottonseed oil, 497.
 Kansas City, Mo., to and from Ruston, La. Class and commodity rates, 287.
 Kansas City, Mo., from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
 Kansas City, Mo., from St. Paul, Minn. Building stone, and dressed and polished building marble, 422.
 Kansas City, Mo., to Shreveport and Alexandria, La. Class and commodity rates, 224.
 Kansas City, Mo., to and from Shreveport, Monroe, and Alexandria, La. Class and commodity rates; fourth section, 287.
 Kenosha, Wis., from Michigan and Wisconsin. Lumber, 367.
 Kentucky from Illinois, Tennessee, and Kentucky mines. Bituminous coal, 378.
 Kentucky to Memphis, Tenn., and Helena, Ark. Whisky, 459.
 Kentucky from St. Charles and Appalachia districts, Va. Coal and coke, 523.
 Kentucky to Winston-Salem and Reidsville, N. C., and South Boston, Martinsville, and Danville, Va. Leaf tobacco, 600.
 Kentucky mines to Mississippi River, Gulf of Mexico, and points in interior Mississippi Valley territory. Bituminous coal, 378.
 Kentucky mines to southeastern and northwestern territories, and Canada. Coal, 449.
 Keokuk, Iowa, to Portland, Oreg., and other north Pacific coast points. Glucose, 672.
 Keokuk, Iowa, to St. Louis, Mo. Pickles, catsup, and kraut, 629.
 Keystone, W. Va., from Ironton, Ohio. Grain, grain products, and hay, 433.
 Knoxville, Tenn., from Canton, Ga. Cotton denims, 330.
 Knoxville, Tenn., to St. Paul, Minn., and Kansas City, Mo. Marble blocks, 392.
 Kosciusko, Miss., from Brilliant and Blocton, Ala. Bituminous coal, 378.
 Kosciusko, Miss., to New York, N. Y., and Boston, Mass. Cotton piece goods; fourth section, 399.
 La Crosse, Wis., to St. Paul, Minn. Canned peas; fourth section, 341.
 Lafayette, La., from Leeds, Ala. Cement, 619.

- La Grande, Oreg., to Montana, North Dakota, South Dakota, Minnesota, and Nebraska. Lumber and products, 316.
- Lake Michigan points in Indiana, to Chicago switching district. Sand, 321.
- Lansingburgh, N. Y., to Boston, Mass., and other points in New England and trunk-line territories, and Canada. Brick, 118.
- Laurel Hill, Fla., from Paxton, Fla. Railroad rails, trestle timbers, spikes, and angle bars, 473.
- Lavender, Wash., to North Dakota, South Dakota, Nebraska, Kansas, Missouri, Colorado, Idaho, Montana, Utah, Wyoming, Oregon, New Mexico, Texas, Oklahoma, and Louisiana. Lumber, 188.
- Lee, Mass., to St. Paul, Minneapolis, and Minnesota Transfer, Minn. Marble; fourth section, 392.
- Leechburg, Pa., from West Virginia. Lumber, 661.
- Leeds, Ala., to Lafayette, La. Cement, 619.
- Leesville, La., to Texas, Oklahoma, New Mexico, Colorado, Kansas, Nebraska, and Missouri. Yellow-pine lumber, 125.
- Lexington, Ky., from St. Charles and Appalachia districts, Va. Coal and coke, 523.
- Limestone, Tex., from Raton and other New Mexico points. Coal, 617.
- Lincoln, Nebr., from Buffalo and Coffeyville, Kans. Paving brick, 211.
- Little Rock, Ark., from and to Ruston, La. Class and commodity rates, 287.
- Lockland, Ohio, from Edgar and Okahumpka, Fla. Clay; fourth section, 663.
- Los Angeles, Cal., from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
- Los Angeles, Cal., from St. Joseph, Mo. Pancake and buckwheat flour, 198.
- Los Angeles, Cal., from Woodhaven, N. Y. Stamped ware, 637.
- Louisiana to Alexandria, La., milled, and reshipped to Rochester, N. Y., and Constable Hook, N. J. Stave bolts, 553.
- Louisiana to Madisonville, Ohio. Lumber, 592.
- Louisiana from Memphis, Tenn. Class and commodity rates, 224.
- Louisiana to Memphis, Tenn. Cotton, 224.
- Louisiana to Memphis, Tenn. Lumber, logs, bolts, staves, and heading, 303.
- Louisiana from Pecos Valley of New Mexico. Hay, 167.
- Louisiana to and from Ruston, La. Class and commodity rates, 287.
- Louisiana to Texas. Yellow-pine lumber, 688.
- Louisiana from Washington. Lumber, 188.
- Louisville, Ky., from Appalachia and St. Charles districts, Va. Coal and coke, 523.
- Louisville, Ky., to Concordia, Kans. Canned goods, 675.
- Louisville, Ky., from Houston, Tex. Brewers' rice, 149.
- Louisville, Ky., to Memphis, Tenn., and Helena, Ark. Whisky, 459.
- Louisville, Ky., from South Chicago, Ill., reshipped to Virginia. Wheat, 335.
- Lower peninsula of Michigan from Wisconsin and Michigan. Lumber, 367.
- Ludington, Mich. Reconsignment charges on coal, 739.
- Ludington, Mich., to Milton, Fla. Pump, 470.
- Lynchburg, Ohio, to Memphis, Tenn., and Helena, Ark. Whisky, 459.
- Lynn, Mass., from South River, N. J. Enameled brick, 653.
- Lyons, Kans., to Fort Worth and North Fort Worth, Tex. Salt, 665.
- McComb City, Miss., to New York, N. Y., and Boston, Mass. Cotton piece goods; fourth section, 399.
- McCredie, Mo., from Omaha, Nebr. Coarse grain and alfalfa feed, 435.
- McDonoughs, N. J., from Hoffman, N. C. Lumber, 487.
- McKeesport, Pa., from West Virginia. Lumber, 661.
- Macon, Ga., to Dayton, Ohio. Iron articles, 625.
- Macon, Mo., to Marshalltown, Iowa. Vehicle parts, 633.

- Madill, Okla., from Shreveport, La. Class rates, 296.
 Madison, Wis., to Chicago, Ill. Iron-working machinery, 147.
 Madisonville, Ohio, from Alabama, Louisiana, Mississippi, Tennessee, and Florida. Lumber, 592.
 Magdalena, N. Mex., to East St. Louis, Ill. Zinc ore, 635.
 Magnolia, Miss., to New York, N. Y., and Boston, Mass. Cotton piece goods; fourth section, 399.
 Malone, Tex., from Raton and other New Mexico points. Coal, 617.
 Mandan, N. Dak., from Oregon. Lumber, 316.
 Manitowoc, Wis., from Michigan and Wisconsin. Lumber, 367.
 Marianna, Ark., from Buffalo, Kans. Paving brick, 208.
 Marianna, Pa., from West Virginia. Lumber, 661.
 Marion, Ill., to Cedar Rapids, Iowa. Bituminous coal, 415.
 Marshall, Tex., from Detroit, Mich. Gas stoves, 597.
 Marshall, Tex., from New Orleans, St. Louis, Memphis, and C. F. A. and Atlantic seaboard territories. Class and commodity rates, 249.
 Marshalltown, Iowa, from Macon, Mo. Vehicle parts, 633.
 Martinsville, Va., from Kentucky. Leaf tobacco, 600.
 Maryland from Norman, N. C. Lumber, 456.
 Massachusetts from Gonic, N. H., and Mechanicville and Lansingburgh, N. Y. Brick, 118.
 Massachusetts to Harlem River, N. Y., via Boston. Fresh and frozen fish, 333.
 Massachusetts to St. Paul, Minneapolis, and Minnesota Transfer, Minn. Marble; fourth section, 392.
 Massachusetts to San Francisco, Cal. Women's untrimmed hats, 411.
 Masters, Colo., to Yuma, Ariz. Potatoes, 515.
 Mechanicville, N. Y., to Boston, Mass., and other points in New England and trunk line territories, and Montreal, Canada. Brick, 118.
 Memphis, Tenn. Free delivery, concentration, and reconsignment privileges on cotton, 256.
 Memphis, Tenn., from Arkansas. Cotton and rough rice, 256.
 Memphis, Tenn., to Arkansas and Louisiana. Class and commodity rates, 224.
 Memphis, Tenn., from Arkansas and Louisiana. Lumber, logs, staves, and heading, 303.
 Memphis, Tenn., from and to Arkansas and Missouri. Class and commodity rates, 256.
 Memphis, Tenn., from and to Hopefield, Ark. Bridge tolls, 256.
 Memphis, Tenn., from Kentucky, Ohio, Illinois, and St. Louis, New York, and Baltimore. Whisky, 459.
 Memphis, Tenn., from Louisiana. Cotton, 224.
 Memphis, Tenn., to Marshall and Jefferson, Tex. Class and commodity rates, 249.
 Memphis, Tenn., from New York, N. Y. Beer, 459.
 Memphis, Tenn., from Rome, Ga. Cast-iron dog irons, 513.
 Memphis, Tenn., to and from Ruston, La. Class and commodity rates, 287.
 Memphis, Tenn., to Shreveport and Alexandria, La. Class and commodity rates, 224.
 Memphis, Tenn., to Shreveport, La., and Texarkana, Ark. Class and commodity rates; fourth section, 249.
 Memphis, Tenn., to and from Shreveport, Monroe, and Alexandria, La. Class and commodity rates; fourth section, 287.
 Mendota, Va., to Statesville, N. C. Sand, 586.
 Meridian, Miss., to New York, N. Y., and Boston, Mass. Cotton-piece goods; fourth section, 399.
 Merom, Ind., to Columbus Junction, Iowa. Mussel shells, 627.
 Mesa, Ariz., to San Francisco, Cal. Junk, 220.

- Miamisburg, Ohio, from Edgar and Okahumpka, Fla. Clay; fourth section, 663.
 Michigan to Nebraska, Kansas, and Colorado. Salt, 426.
 Michigan to Ohio, Indiana, Illinois, and lower peninsula of Michigan. Lumber, 367.
 Michigan from St. Charles and Appalachia districts, Va. Coal and coke, 523.
 Michigan (lower peninsula) from Wisconsin and Michigan. Lumber, 367.
 Michigan (upper peninsula) from Sulphur Mines, La. Sulphur, 360.
 Middletown, Ohio, from Edgar and Okahumpka, Fla. Clay; fourth section, 663.
 Milton, Fla., from Milwaukee, Wis., Cleveland and Salem, Ohio, and Wyandotte and
 Ludington, Mich. Machinery, castings, pump, and bicarbonate of soda, 470.
 Milton, Fla., from Paxton, Fla. Turpentine, rosin, turpentine stills and fixtures,
 turpentine cups, and dip barrels, 473.
 Milwaukee, Wis. Reconsignment charges on bituminous coal, 739.
 Milwaukee, Wis., from Forrester, Ala., dressed in transit at Columbus, Miss. Lumber,
 337.
 Milwaukee, Wis., from Michigan and Wisconsin. Lumber, 367.
 Milwaukee, Wis., to Milton, Fla. Machinery and castings, 470.
 Milwaukee, Wis., from Pennsylvania mines. Anthracite coal, 363.
 Milwaukee, Wis., to San Francisco, Cal. Women's untrimmed hats, 411.
 Milwaukee, Wis., to Wilmington, N. C. Ground dried blood, 171.
 Minneapolis, Minn., from Ashley Falls, Lee, Sheffield, and West Stockbridge, Mass.,
 Marble; fourth section, 392.
 Minneapolis, Minn., from Oregon. Lumber and products, 316.
 Minneapolis, Minn., from West Salem, Wis. Canned peas, 341.
 Minnesota from Galesburg, Ill. Iron and wood fence gates, 744.
 Minnesota from Oklahoma. Cottonseed meal, hulls, and cake, 497.
 Minnesota from Oregon. Lumber and products, 316.
 Minnesota Transfer, Minn., from Ashley Falls, Lee, Sheffield, and West Stockbridge,
 Mass. Marble; fourth section, 392.
 Minot, N. Dak., from Oregon. Lumber, 316.
 Mississippi to Baton Rouge and New Orleans, La. Cottonseed, 141.
 Mississippi to Boston, Mass., and New York, N. Y. Cotton-piece goods; fourth
 section, 399.
 Mississippi to Madisonville, Ohio. Lumber, 592.
 Mississippi River from Illinois, Kentucky, Tennessee, and Alabama mines. Bi-
 tuminous coal, 378.
 Mississippi River, points west of, from South River, N. J. Enameled brick, 653.
 Mississippi River crossings to Concordia, Kans. Class and commodity rates, 675.
 Mississippi Valley territory from Illinois, Kentucky, Tennessee, and Alabama mines.
 Bituminous coal, 378.
 Missouri from Galesburg, Ill. Iron and wood fence gates, 744.
 Missouri from Illinois mines. Bituminous coal, 190.
 Missouri from Illinois and Indiana mines. Bituminous coal, 520.
 Missouri from Leesville, La. Yellow-pine lumber, 125.
 Missouri to Memphis, Tenn. Class and commodity rates, 256.
 Missouri from Oak Hills, Colo. Bituminous coal, 94.
 Missouri from Oklahoma. Cottonseed cake, meal, and hulls, 497.
 Missouri from Omaha, Nebr. Coarse grain and alfalfa feed, 485.
 Missouri from Washington. Lumber, 188.
 Missouri River, points east of, to San Francisco, Cal. Gas cooking stoves, 445.
 Missouri River, points east of, to San Francisco, Cal. Women's untrimmed hats, 411.
 Mobile, Ala., from Dallas, Tex., exported to Havana, Cuba. Grease, 755.
 Mobile, Ala., to Nashville, Tenn. Blackstrap molasses, 447.
 Monongahela, Pa., from West Virginia. Lumber, 661.

- Monroe, La., from Bridgeport, Conn. Loaded shells and metallic cartridges, 561.
 Monroe, La., from Memphis, Tenn. Class and commodity rates, 224.
 Monroe, La., from and to St. Louis, Kansas City, and Memphis. Class and commodity rates; fourth section, 287.
 Montana from Bonners Ferry, Idaho. Lumber, 568.
 Montana from Oklahoma. Cottonseed cake, meal, and hulls, 497.
 Montana from Oregon. Lumber and products, 316.
 Montana from Washington. Lumber, 188.
 Montgomery, Ala. Stoppage in transit on shipments of fresh meats and packing-house products, from North Fort Worth, Tex., and East St. Louis, Ill., destined to Columbus, Ga., 701.
 Montgomery, La., to Alexandria, La., milled, and reshipped to Rochester, N. Y., and Constable Hook, N. J. Stave bolts, 553.
 Monticello, Ark., from Independence, Kans. Paving brick, 208.
 Montreal, Canada, from Mechanicville and Lansingburgh, N. Y. Brick, 118.
 Morganton, N. C., from Grasselli, Ala. Sulphuric acid, 478.
 Muscatine, Iowa, to New York, N. Y. Mussel shells, 613.
 Nashville, Tenn., to Helena, Ark. Whisky, 459.
 Nashville, Tenn., from Mobile, Ala. Blackstrap molasses, 447.
 Nashville, Tenn., from St. Charles and Appalachia districts, Va. Coal and coke, 523.
 Naugatuck, W. Va., from Ironton, Ohio. Grain, grain products, and hay, 433.
 Nebraska from Galesburg, Ill. Iron and wood fence gates, 744.
 Nebraska from Leesville, La. Yellow-pine lumber, 125.
 Nebraska from Oak Hills, Colo. Bituminous coal, 94.
 Nebraska from Ohio and Michigan. Salt, 426.
 Nebraska from Oklahoma. Cottonseed cake, meal, and hulls, 497.
 Nebraska from Oregon. Lumber and products, 316.
 Nebraska from Washington. Lumber, 188.
 Nelsons, Wash., to North and South Dakota, Nebraska, Kansas, Missouri, Colorado, Idaho, Montana, Utah, Wyoming, Oregon, New Mexico, Texas, Oklahoma, and Louisiana. Lumber, 188.
 New Bloomfield, Mo., from Omaha, Nebr. Coarse grain and alfalfa feed, 485.
 New Chicago, Ind., to Tacoma, Wash. Mechanically burnt wooden novelties, 347.
 New England to Perth Amboy, N. J. Iron and steel articles, 162.
 New England territory from Mechanicville and Lansingburgh, N. Y., and Gonic, N. H. Brick, 118.
 New Jersey from Norman, N. C. Lumber, 456.
 New Jersey to San Francisco, Cal. Women's untrimmed hats, 411.
 New Jersey from South Carolina and Georgia. Lumber, 753.
 New Kensington, Pa., from West Virginia. Lumber, 661.
 New Mexico to Cleburne and other Texas points. Coal, 617.
 New Mexico from Leesville, La. Yellow-pine lumber, 125.
 New Mexico to Texas and Louisiana. Hay, 167.
 New Mexico from Washington. Lumber, 188.
 New Orleans, La., to C. F. A. territory. Clay, 132.
 New Orleans, La., to Concordia, Kans. Commodity rates, 675.
 New Orleans, La., to Dallas and other Texas points. Bananas, 725.
 New Orleans, La., to Jackson, Tenn. Spokes, 641.
 New Orleans, La., to Marshall and Jefferson, Tex. Class and commodity rates, 249.
 New Orleans, La., from Mississippi. Cottonseed, 141.
 New Orleans, La., from Okmulgee, Okla., stopped in transit at Amesville, La., for barreling. Petroleum cylinder stock, 559.

- New Orleans, La., to and from Ruston, La. Class and commodity rates, 287.
- New Orleans, La., to Texarkana, Ark. Class and commodity rates; fourth section, 249.
- New York from Norman, N. C. Lumber, 456.
- New York to San Francisco, Cal. Women's untrimmed hats, 411.
- New York from South Carolina and Georgia. Lumber, 753.
- New York, N. Y., to C. F. A. territory. Clay, 132.
- New York, N. Y., to Chicago, Ill., and other points in C. F. A. territory. Crude sulphur and brimstone, 349.
- New York, N. Y., from Coleman and Sumterville, Fla. Cabbage; estimated weight, 563.
- New York, N. Y., from Gonic, N. H. Brick, 118.
- New York, N. Y., to Helena, Ark. Whisky; fourth section, 459.
- New York, N. Y., from Henderson, Ky. Cotton piece goods, 399.
- New York, N. Y., to Marshall and Jefferson, Tex., via Gulf ports. Class and commodity rates, 249.
- New York, N. Y., to Memphis, Tenn. Whisky and beer, 459.
- New York, N. Y., from Muscatine, Iowa. Mussel shells, 613.
- New York, N. Y., from Niagara Falls, Ont., destined to Dothan, Ala., via Savannah and Brunswick, Ga. Cyanamid, 476.
- New York, N. Y., from Ore Hill, N. C. Lumber, 409.
- New York, N. Y., from Provincetown and other Massachusetts points, via Boston. Fresh and frozen fish, 333.
- New York, N. Y., to St. Paul, Minn. Marble blocks, 392.
- Newark, N. J., from Gonic, N. H. Brick, 118.
- Newberry, Pa., from Albany, N. Y. Old rails, 217.
- Niagara Falls, Ont., to Savannah and Brunswick, Ga., via New York, N. Y., destined to Dothan, Ala. Cyanamid, 476.
- Norfolk, Va., from Black Mountain district, Va., for transshipment. Bituminous coal, 153.
- Norfolk, Va., from South Chicago, Ill., milled in transit at Louisville, Ky. Wheat, 335.
- Norman, N. C., to Virginia, West Virginia, and District of Columbia. Lumber, 456.
- North Atlantic ports to C. F. A. territory. Clay, 132.
- North Atlantic ports to C. F. A. territory. Crude sulphur and brimstone, 349.
- North Carolina to Shreveport and Alexandria, La. Class and commodity rates, 224.
- North Dakota from Galesburg, Ill. Iron and wood fence gates, 744.
- North Dakota from Oklahoma. Cottonseed meal, cake, and hulls, 497.
- North Dakota from Oregon. Lumber and products, 316.
- North Dakota from Washington. Lumber, 188.
- North Fort Worth, Tex., to Columbus, Ga., stopped in transit at Montgomery, Ala., for partial unloading. Fresh meats and packing-house products, 701.
- North Fort Worth, Tex., from Kansas. Salt, 665.
- North Pacific coast from Houston, Tex. Clean rice, 149.
- North Pacific coast from Keokuk, Iowa. Glucose, 672.
- North Truro, Mass., to Harlem River, N. Y., via Boston. Fresh and frozen fish, 333.
- North Wisconsin group from Sulphur Mines, La. Sulphur, 360.
- Northwestern territory from Kentucky mines. Coal, 449.
- Norwich, Conn., from Henderson, Ky. Cotton-piece goods, 399.
- Oak Hills, Colo., to Kansas, Nebraska, Missouri, Iowa, and South Dakota. Bituminous coal, 94.
- Official classification territory. Cigarettes; packing requirements, 371.
- 89 I. C. C.

- Official classification territory from South River, N. J. Enameled brick, 653.
- Ogden, Utah, from eastern territory, destined to Willamette Valley points, and Portland, Oreg. Class and commodity rates, 193.
- Ohio to Memphis, Tenn., and Helena, Ark. Whisky, 459.
- Ohio from Michigan and Wisconsin. Lumber, 367.
- Ohio to Nebraska, Kansas, and Colorado. Salt, 426.
- Ohio from Norman, N. C. Lumber, 456.
- Ohio from St. Charles and Appalachia districts, Va. Coal and coke, 523.
- Ohio River, points on and north of, from St. Charles and Appalachia districts, Va. Coal and coke, 523.
- Okahumpka, Fla., to Covington, Ky. Clay, 663.
- Oklahoma from Galesburg, Ill. Iron and wood fence gates, 744.
- Oklahoma to Kansas, Missouri, Nebraska, Iowa, Minnesota, North Dakota, South Dakota, Montana, and Wyoming. Cottonseed cake, meal, and hulls, 497.
- Oklahoma to Kansas City, Mo. Cottonseed oil, 497.
- Oklahoma from Leesville, La. Yellow-pine lumber, 125.
- Oklahoma from Saginaw, Mich. Kraut brine, kraut, and pickles, 622.
- Oklahoma from Shreveport, La. Class rates, 296.
- Oklahoma from Washington. Lumber, 188.
- Oklahoma City, Okla., from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
- Oklmulgee, Okla., to Amesville, La., for barreling, and reshipped to New Orleans, for export. Petroleum cylinder stock, 559.
- Omaha, Nebr., to Atlantic seaboard for export. Grain, 643.
- Omaha, Nebr., from Carroll and Oskaloosa, Iowa. Agricultural implements and iron water gates, 556.
- Omaha, Nebr., from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
- Omaha, Nebr., to Vandalia and other Missouri points. Coarse grain and alfalfa feed, 485.
- Ore Hill, N. C., to New York, N. Y. Lumber, 409.
- Oregon to eastern territory, via the Ogden, Utah, and Roseville, Cal., gateways. Class and commodity rates, 193.
- Oregon to Montana, North Dakota, South Dakota, Minnesota, and Nebraska. Lumber and products, 316.
- Oregon from Washington. Lumber, 188.
- Oskaloosa, Iowa, to Omaha, Nebr. Iron water gates, 556.
- Owensboro, Ky., to Memphis, Tenn. Whisky, 459.
- Palestine, Ill., to Columbus Junction, Iowa. Mussel shells; fourth section, 627.
- Panther, W. Va., from Ironton, Ohio. Grain, grain products, and hay, 433.
- Paxton, Fla., to Laurel Hill, Fla. Railroad rails, trestle timbers, spikes, and angle bars, 473.
- Paxton, Fla., to Milton, Fla. Turpentine, rosin, turpentine stills and fixtures, turpentine cups, and dip barrels, 473.
- Pecos Valley of New Mexico to Texas and Louisiana. Hay, 167.
- Pekin, Ill., to Memphis, Tenn. Whisky, 459.
- Penn, Pa., from West Virginia. Lumber, 661.
- Pennsylvania from Norman, N. C. Lumber, 456.
- Pennsylvania from Rock Forge and other West Virginia points. Lumber, 661.
- Pennsylvania to San Francisco, Cal. Women's untrimmed hats, 411.
- Pennsylvania mines to Milwaukee, Wis. Anthracite coal, 363.
- Pensacola, Fla., to Shreveport, La. Nitrate of soda, 658.
- Peoria, Ill., to Concordia, Kans. Through rates, 675.
- Peoria, Ill., to Memphis, Tenn. Whisky, 459.
- Peoria, Ill., from St. Charles and Appalachia districts, Va. Coal and coke, 523.

- Perry, Oreg., to Montana, North Dakota, South Dakota, Minnesota, and Nebraska. Lumber and products, 316.
- Perth Amboy, N. J., from New England. Iron and steel articles, 162.
- Philadelphia, Pa., to C. F. A. territory. Clay, 132.
- Philadelphia, Pa., from Gonic, N. H. Brick, 118.
- Philadelphia, Pa., from Rockford, Ill. Unfinished cotton hosiery, 494.
- Pittsburgh, Pa., to Helena, Ark. Whisky, 459.
- Pittsburgh, Pa., from West Virginia. Lumber, 661.
- Pittsburgh district, Pa. Furnace allowances on iron ore, 312.
- Plainview, Ark., from Howe, Okla. Used steel car trucks, 475.
- Pocahontas, Va., to Greensboro, N. C., reconsigned to Greenville, S. C. Coke, 218.
- Port Arthur, Tex., to Concordia, Kans. Commodity rates, 675.
- Port Arthur, Tex., from Vicksburg, Miss. Box shooks, 734.
- Portland, Oreg., from eastern territory, via the Ogden, Utah, and Roseville, Cal., gateways. Class and commodity rates, 193.
- Portland, Oreg., from Keokuk, Iowa. Glucose, 672.
- Portland, Oreg., from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
- Potomac Yard, Va. Transfer charges on citrus fruit, 325.
- Powers, Ark., from Shreveport, La. Class rates, 296.
- Providence, R. I., from Henderson, Ky. Cotton-piece goods, 399.
- Provincetown, Mass., to Harlem River, N. Y., via Boston. Fresh and frozen fish, 333.
- Provo, Utah, from Suffolk, Va. Peanuts, 345.
- Racine, Wis., from Michigan and Wisconsin. Lumber, 367.
- Raton, N. Mex., to Cleburne and other Texas points. Coal, 617.
- Reform, Ala., from Forrester, Ala., reshipped to Chicago and Bradley, Ill., and Milwaukee, Wis. Lumber, 337.
- Reidsville, N. C., from Richmond and other Kentucky points. Leaf tobacco, 600.
- Richmond, Ky., to Reidsville, N. C. Leaf tobacco, 600.
- Richmond, Va., from South Chicago, Ill., milled in transit at Louisville, Ky. Wheat, 335.
- Rochester, N. Y., from Alexandria, La. Stave bolts, 553.
- Rock Forge, W. Va., to McKeesport and other Pennsylvania points. Lumber, 661.
- Rockford, Ill., to Philadelphia, Pa. Unfinished cotton hosiery, 494.
- Roderfield, W. Va., from Ironton, Ohio. Grain, grain products, and hay, 433.
- Rome, Ga., to Memphis, Tenn. Cast-iron dog irons, 513.
- Rose Center, Mich., from Toledo, Ohio. Empty refrigerator cars, 589.
- Roseville, Cal., from eastern points, destined to Willamette Valley points, and Portland, Oreg. Class and commodity rates, 193.
- Ruston, La., from and to St. Louis, Kansas City, Memphis, New Orleans, Atlantic seaboard territory, Little Rock, and points in Texas and Louisiana. Class and commodity rates, 287.
- Sacramento, Cal., from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
- Saginaw, Mich., to California, Washington, Colorado, Texas, and Oklahoma City, Okla. Kraut, kraut brine, and pickles, 622.
- Saginaw Valley to Toledo and other points in Ohio, Indiana, and Illinois. Lumber, 367.
- St. Charles district, Va., to points on and north of the Ohio River. Coal and coke, 523.
- St. Joseph, Mo., to Atlantic and Gulf ports for export. Harness and saddlery, 697.
- St. Joseph, Mo., to St. Louis, Mo., and Chicago, Ill., for beyond. Packing-house products, fresh meats, and green salted hides, 417.
- St. Joseph, Mo., to San Francisco and Los Angeles, Cal. Pancake and buckwheat flour, 198.
- St. Louis, Mo., from Concordia, Kans. Butter, eggs, and dressed poultry, 675.

- St. Louis, Mo., to Concordia, Kans. Class and commodity rates, 675.
- St. Louis, Mo., to Dundee, Ill. Pine lumber, 670.
- St. Louis, Mo., to Gallup, N. Mex. Wrapping paper and paper bags, 631.
- St. Louis, Mo., from Keokuk, Iowa. Pickles, catsup, and kraut, 629.
- St. Louis, Mo., to Marshall and Jefferson, Tex. Class and commodity rates, 249.
- St. Louis, Mo., to Marshalltown, Iowa. Vehicle parts; fourth section, 633.
- St. Louis, Mo., to and from Memphis, Tenn. Class and commodity rates, 256.
- St. Louis, Mo., to Memphis, Tenn. Whisky, 459.
- St. Louis, Mo., from north Atlantic ports and Gulf ports. Clay, 132.
- St. Louis, Mo., to and from Ruston, La. Class and commodity rates, 287.
- St. Louis, Mo., from St. Joseph, Mo., for beyond. Fresh meats, packing-house products, and green salted hides, 417.
- St. Louis, Mo., to Savannah and Belfast, Ga. Wire rope, 213.
- St. Louis, Mo., to Shreveport and Alexandria, La. Class and commodity rates, 224.
- St. Louis, Mo., to Shreveport, La., and Texarkana, Ark. Class and commodity rates; fourth section, 249.
- St. Louis, Mo., to and from Shreveport, Monroe, and Alexandria, La. Class and commodity rates; fourth section, 287.
- St. Paul, Minn., to Kansas City, Mo. Building stone, and polished and dressed building marble, 422.
- St. Paul, Minn., from New York, N. Y., Jersey City and Weehawken, N. J., Baltimore, Md., and Knoxville, Tenn. Marble blocks, 392.
- St. Paul, Minn., from Oregon. Lumber and products, 316.
- St. Paul, Minn., from West Salem, Wis. Canned peas, 341.
- Salem, Ohio, to Milton, Fla. Machinery, 470.
- Salem, Oreg., from eastern territory via the Ogden, Utah, and Roseville, Cal., gateways. Class and commodity rates, 193.
- Salina, Kans., from Jersey City, N. J. Burlap bags, 222.
- San Diego, Cal., from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
- San Francisco, Cal., from Cleveland, Ohio, Detroit, Mich., Chicago, Ill., Milwaukee, Wis., and points in New York, Pennsylvania, New Jersey, and Massachusetts. Women's untrimmed hats, 411.
- San Francisco, Cal., from Mesa, Ariz. Junk, 220.
- San Francisco, Cal., from points east of the Missouri River. Gas cooking stoves, 445.
- San Francisco, Cal., from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
- San Francisco, Cal., from St. Joseph, Mo. Pancake and buckwheat flour, 198.
- Saugatuck, Mich. Through routes and joint rates with water line, 757.
- Savannah, Ga., to Dothan, Ala. Cyanamid, 476.
- Savannah, Ga., from St. Louis, Mo. Wire rope, 213.
- Seattle, Wash., from Chicago, Ill. Spring delivery wagon, 611.
- Seattle, Wash., from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
- Sheffield, Mass., to St. Paul, Minneapolis, and Minnesota Transfer, Minn. Marble; fourth section, 392.
- Shreveport, La., from Memphis, Tenn. Class and commodity rates, 224.
- Shreveport, La., from Memphis, Tenn., and St. Louis, Mo. Class and commodity rates; fourth section, 249.
- Shreveport, La., from Memphis, St. Louis, Kansas City, Atlantic seaboard territory, the Virginias, and the Carolinas. Class and commodity rates, 224.
- Shreveport, La., to Oklahoma and Arkansas. Class rates, 296.
- Shreveport, La., from Pensacola, Fla. Nitrate of soda, 658.
- Shreveport, La., from and to St. Louis, Kansas City, and Memphis. Class and commodity rates; fourth section, 287.
- Shreveport group from Memphis, Tenn. Class and commodity rates, 224.

- Sioux City, Iowa, to and from South Dakota. Express rates, 703.
- Slidell, La., from Alabama mines. Bituminous coal, 378.
- Soest, La., to Alexandria, La., milled, and reshipped to Rochester, N. Y., and Constable Hook, N. J. Stave bolts, 553.
- South Bend, Ind., from Ivorydale, Ohio. Candle pitch, 489.
- South Bend, Ind., from New York, Philadelphia, New Orleans, and points in Georgia. Clay, 132.
- South Boston, Va., from Kentucky. Leaf tobacco, 600.
- South Carolina to New Jersey and New York. Lumber, 753.
- South Carolina to Shreveport and Alexandria, La. Class and commodity rates, 224.
- South Chicago, Ill., to Louisville, Ky., reshipped to Virginia. Wheat, 335.
- South Dakota from Galesburg, Ill. Iron and wood fence gates, 744.
- South Dakota from Oak Hills, Colo. Soft coal, 94.
- South Dakota from Oklahoma. Cottonseed cake, meal, and hulls, 497.
- South Dakota from Oregon. Lumber and products, 316.
- South Dakota from and to Sioux City, Iowa. Express rates, 703.
- South Dakota from Washington. Lumber, 188.
- South River, N. J., to eastern trunk line and C. F. A. territories, points west of the Mississippi River, and Canada. Enameled brick, 653.
- Southeastern territory from Kentucky mines. Coal, 449.
- Southern classification territory. Cigarettes; packing requirements, 371.
- Southern classification territory. Classification of sprocket chains, riveted iron and steel pipe, stick licorice, ice-making machinery, and popped corn confectionery, 173.
- Southern territory to Madisonville, Ohio. Lumber, 592.
- Spring Hope, N. C., to Toronto, Canada. Rough lumber, 639.
- Starkville, Miss., to New York, N. Y., and Boston, Mass. Cotton-piece goods; fourth section, 399.
- Statesville, N. C., from Mendota, Va. Sand, 586.
- Steubenville, Ohio, from New York, Philadelphia, New Orleans, and points in Georgia. Clay, 132.
- Stevenson, La., to DeQueen, Ark. Second-hand sawmill machinery, 215.
- Stockton, Cal. Absorption of storage charges on beans, 209.
- Stonewall, Miss., to New York, N. Y., and Boston, Mass. Cotton-piece goods; fourth section, 399.
- Suffolk, Va., to Provo, Utah. Peanuts, 345.
- Sulphur Mines, La., to Wisconsin and upper peninsula of Michigan. Sulphur, 360.
- Sumterville, Fla., to New York, N. Y. Cabbage, 563.
- Sweet Springs, Mo., from Jersey City, N. J. Burlap bags, 222.
- Tacoma, Wash., from New Chicago, Ind. Mechanically burnt wooden novelties, 347.
- Takoma, D. C., from South River, N. J. Enameled brick, 653.
- Talihina, Okla., from Shreveport, La. Class rates, 296.
- Talmage, Wash., to North and South Dakota, Nebraska, Kansas, Colorado, Idaho, Montana, Utah, Wyoming, Oregon, New Mexico, Texas, Oklahoma, Missouri, and Louisiana. Lumber, 188.
- Tarentum, Pa., from West Virginia. Lumber, 661.
- Taylorlton, Ky., to Memphis, Tenn. Whisky, 459.
- Teaaway, Wash., to North and South Dakota, Nebraska, Kansas, Missouri, Colorado, Idaho, Montana, Utah, Wyoming, Oregon, New Mexico, Texas, Oklahoma, and Louisiana. Lumber, 188.
- Tennessee from Illinois, Kentucky, and Tennessee mines. Bituminous coal, 378.
- Tennessee to Madisonville, Ohio. Lumber, 592.
- Tennessee from St. Charles and Appalachia districts, Va. Coal and coke, 523.

- Tennessee to St. Paul, Minn., and Kansas City, Mo. Marble blocks, 392.
 Tennessee mines to Mississippi River, Gulf of Mexico, and points in interior Mississippi Valley territory. Bituminous coal, 378.
 Terre Haute, Ind., to Helena, Ark. Whisky, 459.
 Terre Haute, Ind., from Jersey City, N. J. Burlap bags, 222.
 Terre Haute, Ind., from St. Charles and Appalachia districts, Va. Coal and coke, 523.
 Texarkana, Ark., from Memphis, Tenn. Class and commodity rates, 224.
 Texarkana, Ark., from New Orleans, La. Class and commodity rates; fourth section, 249.
 Texas from Leesville, La. Yellow-pine lumber, 125.
 Texas from Louisiana. Yellow-pine lumber, 688.
 Texas from New Orleans, La. Bananas, 725.
 Texas from Pecos Valley of New Mexico. Hay, 167.
 Texas from Raton and other New Mexico points. Coal, 617.
 Texas from and to Ruston, La. Class and commodity rates, 287.
 Texas from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
 Texas from Washington. Lumber, 188.
 Texas City, Tex., from Arkadelphia and Ashdown, Ark. Oak and gum staves, and heading, 573.
 Thacker, W. Va., from Ironton, Ohio. Grain, grain products, and hay, 433.
 Toledo, Ohio. Car demurrage, 583.
 Toledo, Ohio. Transit regulations on grain, 580.
 Toledo, Ohio, from Michigan and Wisconsin. Lumber, 367.
 Toledo, Ohio, to Rose Center, Mich. Empty refrigerator cars, 589.
 Toronto, Ontario, from Spring Hope, N. C. Rough lumber, 639.
 Trenton, N. J., from Gonic, N. H. Brick, 118.
 Trunk line territory from Henderson, Ky. Cotton-piece goods, 399.
 Trunk line territory from Mechanicville and Lansingburgh, N. Y., and Gonic, N. H. Brick, 118.
 Tupelo, Miss., to New York, N. Y., and Boston, Mass. Cotton-piece goods; fourth section, 399.
 Tyrone, Ky., to Memphis, Tenn. Whisky, 459.
 Upper peninsula of Michigan from Sulphur Mines, La. Sulphur, 360.
 Utah from Washington. Lumber, 188.
 Valdosta, Ga., from Chattanooga, Tenn. Hollow fireproof building tile, 615.
 Valliant, Okla., from Shreveport, La. Class rates, 296.
 Vandalia, Mo., from Omaha, Nebr. Coarse grain and alfalfa feed, 485.
 Vandergrift, Pa., from West Virginia. Lumber, 661.
 Verda, La., to Alexandria, La., milled, and reshipped to Rochester, N. Y., and Constable Hook, N. J. Stave bolts, 553.
 Verona, Pa., from West Virginia. Lumber, 661.
 Vicksburg, Miss., from Alabama mines. Bituminous coal, 378.
 Vicksburg, Miss., to Port Arthur, Tex. Box shooks, 734.
 Virginia from Norman, N. C. Lumber, 456.
 Virginia to Ohio River and points north thereof. Coke, 523.
 Virginia to Shreveport and Alexandria, La. Class and commodity rates, 224.
 Virginia from South Chicago, Ill., milled at Louisville, Ky. Wheat, 335.
 Virginia mines to Ohio River and points north thereof. Coal, 523.
 Wallowa, Oreg., to Montana, North Dakota, Minnesota, and Nebraska. Lumber and products, 316.
 Washington to North and South Dakota, Nebraska, Kansas, Missouri, Colorado, Idaho, Montana, Wyoming, Oregon, New Mexico, Texas, Oklahoma, and Louisiana. Lumber, 188.

- Washington from Saginaw, Mich. Kraut, kraut brine, and pickles, 622.
 Washington, D. C., from Athens, Tex. Household goods, 221.
 Washington, D. C., from Gonic, N. H. Brick, 118.
 Waukegan, Ill., from Jersey City, N. J. Burlap bags, 222.
 Waverly Transfer, N. J., from Massachusetts, destined to St. Paul, Minneapolis, and Minnesota Transfer, Minn. Marble; fourth section, 392.
 Weehawken, N. J., to St. Paul, Minn. Marble blocks, 392.
 Welch, W. Va., from Ironton, Ohio. Grain, grain products, and hay, 433.
 Weleetka, Okla. Concentration of cotton, 181.
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ABSORPTION.

Former finding that nonabsorption of storage charges at Stockton, Cal., on beans was not shown to have resulted in damage to complainants affirmed on rehearing. *Ennis, Brown Co. v. A., T. & S. F. Ry. Co.* 209.

Whether or not rates on oysters are sufficiently high to warrant the absorption of icing charges not determined, the evidence being insufficient. *Platts v. N. Y., N. H. & H. R. R. Co.* 690 (696).

ACROSS-LAKE RATES.

Across-lake rate on anthracite coal for local delivery at Milwaukee, which is higher than the proportional across-lake rate to Milwaukee on traffic destined for beyond, not found to discriminate unduly against Milwaukee. *City of Milwaukee v. C., M. & St. P. Ry. Co.* 363 (366).

ADDITIONAL SERVICE.

Transfer of citrus fruit from ventilated cars into refrigerator cars under conditions disclosed is in the nature of an added special service, for which defendants may justly impose a reasonable charge against the shipper. *Florida Citrus Exchange v. A. C. L. R. R. Co.* 325 (329).

ADJUSTMENT OF RATES.

Readjustment of rates to Toledo in order to eliminate certain inequalities and discriminations, permitted. Lumber from Michigan Points, 367.

Possibility that some readjustment will have to be made in other rates is no reason why just and reasonable rates should not be prescribed between points and on commodities involved. *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co.* 497 (509).

ADMINISTRATIVE RULING.

Rules 4 (j) and 5 (b), *Tariff Circular 18-A*, cited. *Broderick & Bascom Rope Co. v. L. & N. R. R. Co.* 213 (214).

Conference Ruling 350, cited. *Pillsbury Flour Mills Co. v. G. N. Ry. Co.* 353 (357).

The use of rule 77, *Tariff Circular 18-A*, and plan for publishing commodity rates does not deprive intermediate points of any of their lawful rights. *Drake Marble & Tile Co. v. C. G. W. R. R. Co.* 422 (423).

Rule 64, *Tariff Circular 18-A*, cited. *Lucke & Co. v. Wabash R. R. Co.* 517 (518).

Rule 5 (b), *Tariff Circular 18-A*, cited. *Reynolds Tobacco Co. v. L. & N. R. R. Co.* 600 (607).

Conference Ruling 119, quoted. *Board of Trade of Chicago v. A. A. R. R. Co.* 643 (651).

Rule 2 (a), *Tariff Circular 18-A*, cited. *Swanson v. T. & P. Ry. Co.* 725 (730).

ADVANCE IN RATES.

At the expiration of two-year period during which Commission's order required existing rates to be kept in effect formerly proposed increases do not go into effect automatically. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (535).

ADVANCE IN RATES. Continued.

- Brick: Increased local rates of the B. & M. R. R. here assailed found justified. It is well settled that an increase in rates which are unreasonably low is not precluded by fact that investments were made in expectation that such rates would be continued in effect. *Duffney Brick Co. v. B. & M. R. R.* 118 (122-123).
- Class rates: Increased rates to the Shreveport group from eastern territories on the first four classes found justified. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (248).
- Classification ratings: Proposed changes in descriptions and class ratings of machine-finished sprocket chains, iron or steel pipe, riveted, stick licorice, ice-making machinery, and popped corn confectionery, in southern territory, justified. *Southern Classification Ratings*, 173.
- Coal: Increased rates on coal from Raton, and other points in New Mexico, to stations on the Trinity & Brazos Valley Ry. from Cleburne to Limestone, Tex., inclusive, not justified. Proposed increased rates are not reasonable merely because they rectify fourth section departures. Coal to Cleburne, Tex., 617.
- Coal and coke: Proposed increases not justified. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (545).
- Coal, bituminous: Increased rates from mines on the St. L., I. M. & S. Ry. in Illinois to stations on the M. P. Ry. in Missouri found justified. Rates cited in comparison are intrastate rates, and no attempt was made to show that transportation conditions are substantially similar. Coal to Glencoe, Mo., 190 (192).
- Coal, bituminous: Increased rates from mines on the Southern Railway in Illinois and Indiana to stations on the Chicago & Alton in Missouri, not justified. The Southern was the only participating road which was represented at the hearing, and all of its testimony was in favor of the continuation of rates now in effect. Coal to Missouri Stations, 520, 522.
- Crostick, cypress: Increased rate on, from Bowie, La., to Eureka, Tex., not justified. Rates on hewn cypress ties should not exceed rate on cypress lumber. *Bowie Lumber Co. v. M. L. & T. R. R. & S. S. Co.* 609 (610).
- Fish, fresh and frozen: Increased rate on, from Massachusetts points to Harlem River, N. Y., justified, in view of the special and expedited service provided over route by way of which proposed rate is to apply. Fish to New York, N. Y., 333 (334).
- Grain: Increased charges which would result from cancellation of transit regulations not justified; and disagreement as to divisions must not cast unjustified increased charges upon shippers. Grain Transit Rules at Buffalo, N. Y., 580 (582).
- Lumber: Increased rates from Washington points to various interstate destinations found justified. It was found that proposed rates would rectify fourth section departures, and would preserve the integrity of group rates from groups or blankets and on bases fixed by Commission in former cases. Lumber from Eastern Wash., 188.
- Lumber: The exercise of an optional privilege of increasing intrastate rates from Saginaw Valley points instead of reducing those from Cadillac, to destinations in southeastern Michigan can not, in the absence of other justifying circumstances, be held to discharge the burden of proof resting upon respondents to show that increased interstate rates are just and reasonable. Increases denied except that a readjustment of rates to Toledo will be permitted. Lumber from Michigan Points, 367 (369-370).
- Lumber, yellow-pine: Proposed cancellation of joint rates from producing points on various lines to points on the Santa Fe system in Texas, not justified. The joint rates may be used, and better switching service and greater ease in obtaining cars from respondent lines make joint rates of benefit. Lumber from Louisiana Points, 688.

ADVANCE IN RATES—Continued.

- Oysters: Increased charges resulting from discontinuance of absorption of bunker icing charges from Atlantic seaboard to western points justified as to shucked oysters in carloads but not justified as to shucked oysters in less than carloads and oysters in the shell in carloads. *Platts v. N. Y., N. H. & H. R. R. Co.* 690.
- Pickles, catsup, and kraut: Rate and minimum from Keokuk, Iowa, to St. Louis, Mo., found justified. Shorter distances from other points warrant some differences in rates. *National Pickle & Canning Co. v. C., B. & Q. R. R. Co.* 629.
- Rice: Increased rate from Houston, Tex., to north Pacific coast points, effective February 1, 1914, found justified. Comparisons with rates on other commodities strongly indicate that rate on clean rice is not unreasonable. *Mutual Rice Trade & Development Asso. v. I. & G. N. Ry. Co.* 149 (151-152).
- Salt: Increased rate from Kansas mines to Fort Worth not justified and maximum rate prescribed. *Swift & Co. v. U. P. R. R. Co.* 665 (669).
- Sand: Increased rates from stations in Indiana along the south shore of Lake Michigan to points within the Chicago switching district, the purpose of which was to place sand on the rate basis of the Lowrey tariffs, found not justified. No transportation reason was offered for excepting coal and grain from the Lowrey basis and not excepting sand. Sand from Indiana Stations, 321 (324).
- Sulphur: Increased rates on crude sulphur and brimstone from Atlantic ports to points in central freight association territory, as a part of a general scheme to eliminate as far as possible so-called unremunerative rates, found justified. *Union Sulphur Co. v. B. & O. R. R. Co.* 349 (351, 352).
- Zinc concentrates: Increased rates from Breckenridge to Denver, Colo., applied as component of the through rates to Bartlesville and Collinsville, Okla., found to have been justified with respect to zinc concentrates having an actual gross value exceeding \$12 per ton, but not justified as to ore and concentrates of a gross value not exceeding \$12 per ton and so released. *Wellington Mines Co. v. C. & S. Ry. Co.* 202 (207).

ADVANTAGES AND DISADVANTAGES.

- Disadvantage which the Black Mountain field is under with respect to rate east to Norfolk does not obtain on coal to Carolina territory, including tidewater coal at Charleston, nor does it obtain on coal destined to points in the west where, on the contrary, the disadvantage is against the balance of the Appalachia field. *Black Mountain Corp. v. L. & N. R. R. Co.* 153 (161).
- Defendants should not keep complainant at Perth Amboy, N. J., under a disadvantage, as compared with mills in the western part of the group, with respect to raw materials used in the manufacturing process. *Pardee Works v. C. R. R. Co. of N. J.* 162 (165).
- Disadvantage, if any, under which St. Charles district labors with respect to Stonega, on the one hand, or the Middlesboro-Jellico district, on the other, is a natural or physical one which it is not the function of the Commission to neutralize. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (549, 550).

AFFIDAVITS. See EVIDENCE.

ALLOWANCES.

- Failure of defendant to pay a furnace allowance to complainants, when such allowances were paid to complainant's competitors, subjected complainants to unlawful prejudice and disadvantage. *Pittsburgh Steel Co. v. P. & L. E. R. R. Co.* 312.
- Transfer of coal from coal cars to box cars not found to be a service of transportation for the performance of which by owner defendant could lawfully pay an allowance. *Lehigh Valley Coal Sales Co. v. L. V. R. R. Co.* 339 (340).

ALTERNATIVE RATES.

Conductor, who was carrier's agent and had authority to execute bills of lading, failed to advise shipper that defendants' tariff provided alternative rates, and that bills of lading did not contain a limitation as to value. Reparation awarded on blackstrap molasses. *Henderson v. M. L. & T. R. R. & S. S. Co.* 483 (484).
 Complaints alleging that specific commodity rates charged on shipments of bananas from New Orleans to Dallas and other Texas points were illegally collected because lower class rates were applicable under an alternative clause in the tariffs and under classification exceptions, dismissed, as classification exception provisions did not include bananas. *Swanson v. T. & P. Ry. Co.* 725.

ALTERNATIVE ROUTES.

Carrier given choice of two routes over which rate prescribed should be made applicable. *Black Mountain Corp. v. L. & N. R. R. Co.* 153 (158).

AMBIGUOUS TARIFF. See TARIFFS.**ANALOGOUS ARTICLES.**

Popped corn confectionery is somewhat analogous to bakery goods, certain breakfast foods, and the like, but the analogy lies principally in methods of packing, the light and bulky character of the packages, and apparent cheapness of articles sold. *Southern Classification Ratings*, 173 (180).

ANY-QUANTITY RATES.

Hosiery moves almost everywhere in official, southern, and western classification territories, under any-quantity rates, and no satisfactory reason is given for the substitution of a carload and less-than-carload basis. Neither is any commercial necessity for such a basis shown. *Burson Knitting Co. v. C., I. & S. R. R. Co.* 494 (496).

Any-quantity basis as applied on harness and saddlery from St. Joseph, Mo., to Atlantic and Gulf ports, for export, not found unreasonable. The fact that carloads are offered for shipment does not prove the unreasonableness of any-quantity rates, for there are a number of commodities which move under any-quantity rates in carload quantities. *Wyeth Hdwe. & Mfg. Co. v. A., T. & S. F. Ry. Co.* 697 (700).

ARBITRARIES.

In making rates on cottonseed oil from Oklahoma points to Kansas City two cents per 100 pounds may be added to rates over two or more lines not under same management or control. *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co.* 497 (511).

ASSEMBLING COST.

Furnace allowances said to have been merely a means by which to equalize assembling cost of materials used in manufacture of pig iron. When one operator pays a greater transportation charge for his ore than his competitor pays, the difference must be absorbed in the cost of production. *Pittsburgh Steel Co. v. P. & L. E. R. R. Co.* 312 (313, 314).

AVERAGE AGREEMENT.

Where the average plan is operative the words "if detained" can not mean "if detained beyond 48 hours," but contemplate any detention, no matter of how short duration. *Woolson Spice Co. v. P. Co.* 583 (584).

AVERAGES.

Distance: In fixing rates and differentials to points in the Shreveport group, the average distance to Shreveport, Monroe, and Alexandria should control rather than the distance to each individual point. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (244).

Distance: In comparing group rates with other rates the average distance from the various points in the group to points of destination in question must be considered, and not the distances from the points on borders of the group. *Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co.* 449 (453).

BACK HAUL.

Where movement into Memphis for concentration, compression, and reconsignment would entail a back haul requiring use of two cars inbound for one outbound, thus resulting in an uneconomical use of equipment, carriers are justified in refusing to accord Memphis shippers such services on the through rate from point of origin to destination. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (272).

Reconsigning and back-haul charges on coal from Hickory Canon, Colo., to Gould, Okla., found unlawful. Carriers failed to effect reconsignment. *Colorado Fuel Co. v. M., K. & T. Ry. Co. of Tex.* 491.

BARREL RATES. See **TANK CARS.**

BILLING. See also **ERROR.**

Miscellaneous articles billed as junk. Billing corrected by inspector, and charges collected at rates applicable to each class of article not found unreasonable or improper. *Shecter v. S. P. Co.* 220.

It is well settled that the character of a shipment and not accidents of billing determine its nature. The export rate was legally applicable on shipment involved although shipper through inadvertence failed to indorse "for export" on the bill of lading. *Kirk v. M., K. & T. Ry. Co. of Tex.* 755, 756.

BLANKET RATES.

Higher rates from Oak Hills, Colo., to certain Missouri Pacific stations not found warranted, especially since blanket rates covering wide areas have been voluntarily established by carriers, and since producing districts have likewise been grouped under common rates in spite of material differences in distance and in operating conditions. *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 94 (110).

Blanket adjustment which carries same rate for distances ranging from 10 to 120 miles can not be sanctioned upon this record. Reasonable commodity rates on rough rice from Arkansas points to Memphis prescribed. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (273).

Carriers voluntarily initiated this system of rate making from a large lumber-producing area and established rates which are reasonable for the average haul from the entire blanket; and should not be permitted to maintain higher rates from more distant portions of blanketed territory without showing good and substantial reasons therefor. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 303 (308).

Departure from policy of maintaining a blanket rate from the southern Arkansas group to all points in the southeastern group is unexplained. Rate on oak staves and heading from Arkadelphia, Ark., to Texas City, Tex., found unreasonable, and reparation awarded. *Major Stave Co. v. M., D. & G. R. R. Co.* 573 (578-579).

BOTH DIRECTIONS.

There would seem to be no reason for maintaining higher rates for like distances to Memphis than are contemporaneously maintained in the reverse direction to New Orleans. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (243).

Class rates from Shreveport to certain points apply northbound only. There appears to be no substantial reason for thus limiting the application. *Shreveport Chamber of Commerce v. K. C. S. Ry. Co.* 296 (302).

Westbound rates on agricultural implements from Carroll, Iowa, and on iron water-gates from Oskaloosa, Iowa, to Omaha, Nebr., in excess of eastbound rates between same points not found unreasonable. Normally rates between same points should be same in both directions. Only vague and uncertain evidence appears of unjust discrimination. *Heider Mfg. Co. v. C. G. W. R. R. Co.* 556-558.

BOTH DIRECTIONS—Continued.

Rate charged for return transportation of spokes from New Orleans, La., to Jackson, Tenn., admittedly unreasonable to extent that it exceeded rate from Jackson to New Orleans. Reparation awarded. *Memphis Freight Bureau v. I. C. R. R. Co.* 641 (642).

BRANCH LINES.

Rates from mines on the Cumberland R. R. not exceeding the group rates applying from mines on branch lines of the L. & N. by more than 5 cents prescribed. *Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co.* 449 (454).

On rehearing, rates on lumber from Norman to points north and east of Virginia cities found unduly prejudicial as compared with rates from other branch-line points in same vicinity. *Snow Lumber Co. v. R. C. & S. Ry. Co.* 456.

BRIDGE TOLL.

Bridge investments involve special risks, and owners of bridges may properly be entitled to higher returns than can be expected from less precarious investments. Bridge tolls across the Mississippi River between Memphis and Arkansas held not unreasonable. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (273, 274).

BURDEN OF PROOF.

Burden of proof to show that rates on cotton seed from northern Mississippi points to Baton Rouge and New Orleans, La., are unreasonable lies upon complainants. Evidence against reasonableness *per se* of the rates is not persuasive. *Capital City Oil Co. v. Y. & M. V. R. R. Co.* 141 (143).

Commodity rates between Memphis and Arkansas have not been increased since 1910, and therefore must be considered reasonable until shown unreasonable. This burden of proof complainants have not sustained. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (268).

Some concrete and persuasive evidence touching the reasonableness of proposed increased interstate rates must ordinarily be adduced in order to discharge the burden of proof resting upon respondents. *Lumber from Michigan Points*, 367 (370).

BURDEN OF TRANSPORTATION. *See also CONFISCATORY RATES.*

It is clearly unfair to impose the full burden of operating losses on ore and concentrates to the benefit of practically all other commodities. *Wellington Mines Co. v. C. & S. Ry. Co.* 202 (205).

CANADA.

No conclusion expressed on question whether Commission has jurisdiction to require the establishment of joint rates from Aetna, Ind., through the Dominion of Canada to Concord Junction, Mass. *Aetna Powder Co. v. Wabash R. R. Co.* 199.

CAR FERRIES.

Neither rates on anthracite coal all rail nor those via car ferries across Lake Michigan have been shown to be unreasonable or to discriminate unduly against Milwaukee. *City of Milwaukee v. C., M. & St. P. Ry. Co.* 363.

CAR FURNISHING.

Whether or not provisions of act are broad enough to require furnishing of refrigerator cars regardless of ultimate destination of shipments and real necessities of the traffic not determined; and it is not found that ventilator cars are not safe and suitable for all of the ordinary demands of citrus fruit traffic. *Florida Citrus Exchange v. A. C. L. R. R. Co.* 325 (329).

CARLOAD AND LESS THAN CARLOAD.

Rates on grain, grain products, and hay from Ironton, Ohio, to points in West Virginia found unreasonable and reasonable maximum rates prescribed. Reparation denied. *Goldcamp Mill Co. v. N. & W. Ry. Co.* 493.

CARLOAD LOTS.

The fact that carloads are offered for shipment does not prove the unreasonableness of any-quantity rates. *Wyeth Hdwe. & Mfg. Co. v. A., T. & S. F. Ry. Co.* 697 (700).

CARS.

Protection afforded by refrigerator cars and ventilator cars discussed. *Florida Citrus Exchange v. A. C. L. R. R. Co.* 325 (328).

CIRCUITOUS ROUTES.

Carriers whose lines are not less than 15 per cent longer than direct lines from same or competing mines should be allowed authority to meet rates of direct lines to junction points in Tennessee and Kentucky and to maintain rates to intermediate points on same basis that they have been authorized to maintain rates to points intermediate to Memphis. *Bituminous Coal to Mississippi Valley Territory*, 378 (390).

CITY LIMITS.

Newberry is a part of Williamsport, Pa., and higher rate to Newberry is said to have been the result of a clerical error as it was not defendants' intention to make different rates to different parts of Williamsport. *Reparation awarded. Joseph & Bros. Co. v. D. & H. Co.* 217.

CLASS AND COMMODITY RATES.

Upon rehearing, rates from eastern defined territories to points in the Willamette Valley of Oregon found justified. *Gile & Co. v. S. P. Co.* 193.

Publication of specific commodity rates to cover all possible combinations lower than through class rates is a matter which can not be accomplished at once, nor would it seem practicable. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (240).

Carriers expected to revise their commodity rates in harmony with class rates and to accord to Marshall and Jefferson commodity rates as freely and to same extent as to Shreveport and Texarkana. *Cities of Marshall and Jefferson, Tex., v. T. & P. Ry. Co.* 249 (254).

Relationship between state class and commodity rates within Arkansas and interstate class and commodity rates is unduly prejudicial to Memphis. Carriers required to remove the discrimination. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (263, 265).

Differentials on other classes should be determined on basis of percentage which that class bears to the first-class rate; and in determining commodity rates the differential should be same percentage of differential in rate on class to which commodity belongs as percentage commodity rate is of class rate. *Id.* (270).

Denims, cotton: Third-class rate on, from Canton, Ga., to Knoxville, Tenn., found unreasonable to extent that it exceeded a lower commodity rate in effect from Atlanta, Ga., a farther distant point. *Knoxville Overall Co. v. L. & N. R. R. Co.* 330.

Rates to Memphis and New Orleans from points of origin involved bear a definite relation to the rate from St. Louis. *Hessig-Ellis Drug Co. v. L. & N. R. R. Co.* 459 (460).

Finding that rates on turpentine stills and fixtures, turpentine in tanks, turpentine cups, and dip barrels from Paxton, Fla., to Milton, Fla., and on railroad rails, trestle timbers, spikes, and angle bars from Paxton to Laurel Hill, Fla., were not unreasonable, affirmed, and commodity rates denied. *Bagdad Land & Lumber Co. v. L. & N. R. R. Co.* 473.

Commodity rates higher than the class rates charged on bananas from New Orleans to Dallas and other Texas points found to have been properly applied. Throughout period involved no exception seems to have been taken to the application of the commodity rates, and no shipper appears to have been misled by reason of the form in which item in question was published. *Swanson v. T. & P. Ry. Co.* 725 (730).

CLASS RATES.

Class rates between Memphis and Arkansas points found reasonable as a whole, but class rates from Memphis to southern Arkansas points are unjust and unreasonable to extent that they conflict with rate adjustment prescribed in the *Memphis Freight Bureau Case*, 39 I. C. C., 224. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (267).

Rates applying between Shreveport and designated stations in Arkansas and Oklahoma found unduly prejudicial to Shreveport. *Shreveport Chamber of Commerce v. K. C. S. Ry. Co.* 296.

Marble or stone, dressed, for building purposes: Class C rate on, from St. Paul to Kansas City, not found illegal or intrinsically unreasonable. *Drake Marble & Tile Co. v. C. G. W. R. R. Co.* 422 (425).

CLASSIFICATION. *See also* UNIFORM CLASSIFICATION.

Difficulty of complying with the law because of lack of uniformity in the three classifications can not be accepted as an excuse for existing violations. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (238).

Allegations concerning rules, regulations, and exceptions to classifications are so general that carriers could not be put upon notice sufficient to require them to defend and hence they are not properly in issue. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (274).

Acid, sulphuric: Southern, western, and official classifications rate sulphuric acid in carloads, either in drums or tank cars, the same. *Kistler, Leah & Co. v. A. G. S. R. R. Co.* 478 (479).

Chains, machine-finished steel belting or sprocket: Second-class rating is not too high and is found justified. Mere differences in weight as compared with weights of other chains should not determine their classification. *Southern Classification Ratings*, 173 (175).

Chains, machine-finished steel belting or sprocket: Proposed changes in descriptions and ratings of chains in western classification, justified. Descriptions proposed were recommended by Committee on Uniform Classification. *Classification of Chain*, 185, 186.

Cigarettes: Requirements of carriers found unreasonable and cigarettes in standard fiber-board packages, meeting general classification requirements, with flaps securely glued and with seams covered by paper sealing strips, should be accepted and transported at not to exceed the first-class rate. *Reynolds Tobacco Co. v. A. & S. Ry. Co.* 371 (376-377).

Confectionery, popped corn: Increase in the rating from fourth class to third class justified. This confectionery is somewhat analogous to bakery goods, certain breakfast food, etc. Relationship between rates on candy and on confection in question discussed. *Southern Classification Ratings*, 173 (179, 180).

Exceptions: Classification exceptions must be interpreted in the light of the classification and of specifications and definitions contained in such classification. *Ludowici-Celadon Co. v. E., J. & E. Ry. Co.* 407 (408).

Gates, iron and wood: Western first-class rating legally applicable to fence gates made of iron and wood, in less than carloads, found unreasonable to extent that it exceeded the third-class rating subsequently established. Reparation awarded on shipments from Galesburg, Ill. *Rowe Mfg. Co. v. C., B. & Q. R. R. Co.* 744.

Hats, untrimmed: Rates applied exceeded rates legally applicable, and refund of overcharges should be made. *Jacob Co. v. A., T. & S. F. Ry. Co.* 411.

Hosiery, undyed and unfinished: Rate on, from Rockford, Ill., to Philadelphia, Pa., not found unreasonable. Contention that complainants' unfinished hosiery is a raw material and should not be included in the classification description of hosiery until it has been finished and made ready for sale, not sustained. *Burson Knitting Co. v. C., I. & S. R. R. Co.* 494, 495.

CLASSIFICATION—Continued.

Junk: Miscellaneous pieces of scrap iron, machinery, electrical appliances, etc., billed as junk, inspected by agent of Transcontinental Freight Bureau and classified as machinery, arc lamps and globes, and scrap iron. Billing corrected accordingly and charges collected at rates applicable to each class of article not found unreasonable or improper. *Shecter v. S. P. Co.* 220.

Licorice, stick: Change proposed apparently a mere change in description without any change in rating, and is found justified. *Southern Classification Ratings*, 173 (176).

Machinery, ice-making or refrigerating: Proposed changes in description and increases in ratings justified. Ratings are lower generally than ratings now given similar articles in official and western classifications, and descriptions were said to have been suggested by the Committee on Uniform Classification. *Id.* (178).

Novelties, burnt pyrographic wooden: Articles involved were unrated by western classification. Charges were collected at the double first-class rate applicable to wooden boxes. One and one-half times the first-class rate found reasonable and reparation awarded. *Sprouse & Son v. N. P. Ry. Co.* 347.

Pipe, iron or steel, riveted: Increased ratings justified. *Southern Classification Ratings*, 173 (176).

Roofing tile: Classification and tariffs in effect when shipment moved show that a carload mixture of roofing tile and accessories was not permitted, and that rate charged on strips, nails, and roofing cement was not legally applicable. *Ludowici-Celadon Co. v. E., J. & E. Ry. Co.* 407 (408).

Signs, vitrolite: Double first-class rating on bent vitrolite signs, l. c. l., from Chicago, Ill., to points in western classification territory not found unreasonable. Signs of kind involved, in less than carloads, are rated the same in western, official, and southern classifications. *United Cigar Mfrs. Co. v. G., C. & S. F. Ry. Co.* 737, 738.

COAST TO COAST. *See* TRANSCONTINENTAL TRAFFIC.

COASTWISE TRADE.

Comparison of water rates on freight carried by vessels in the coastwise trade of the United States with the water rates on similar freight for similar distances carried by vessels in the foreign trade of the United States under United States registry and under foreign registry. Exhibit 4, Section (B). *Relations between Carriers by Rail and by Water*, 1 (75).

COMBINATION RATES.

Combination rate on bituminous coal from the Black Mountain district in Virginia to Atlanta, Ga., applicable via the Louisville & Nashville R. R. and Southern Ry. through Cumberland Gap, Tenn., found unreasonable, and combination rate to Norfolk, Va., for delivery to vessels destined to points outside the capes of Virginia found unjustly discriminatory. Rates prescribed. *Black Mountain Corp. v. L. & N. R. R. Co.* 153.

The Jacksonville-Daytona component of the combination rate on roofing tile and accessories from Chicago Heights, Ill., to Daytona, Fla., found unlawful. Reparation awarded. *Ludowici-Celadon Co. v. E., J. & E. Ry. Co.* 407.

There was no tariff authority for the application of Ohio River combinations on shipments from points north of the Ohio River to Milton, Fla., in preference to the lower combinations based on Pensacola. Reparation awarded. *Stearns & Culver Lumber Co. v. C., M. & St. P. Ry. Co.* 470 (471).

COMBINATION RATES--Continued.

Combination rate on used steel car trucks from Howe, Okla., to Plainview, Ark., found unreasonable on rehearing to a greater extent than in original report and former award of reparation increased. *Zelnicker Supply Co. v. C., R. I. & P. Ry. Co.* 475.

Combination rate on news print paper from International Falls, Minn., to Denver, Colo., found unreasonable to extent that it exceeded a joint rate contemporaneously in force but which had not been concurred in by the initial line due to a misunderstanding. *Minnesota & Ontario Power Co. v. C., St. P., M. & O. Ry. Co.* 481 (482).

Rate on tobacco from Richmond, Ky., to Reidsville, N. C., applicable via Norton and Lynchburg, Va., found unreasonable to extent that it exceeded the combination rate applicable via Winchester. Reparation awarded. *Reynolds Tobacco Co. v. L. & N. R. R. Co.* 600 (607).

Rate on cement from Leeds, Ala., to Lafayette, La., found unreasonable and unjustly discriminatory. Establishment of a joint rate via New Orleans, La., required. *Lafayette Chamber of Commerce v. A. & V. Ry. Co.* 619.

COMMERCIAL DISADVANTAGES.

It is not within Commission's province to require carriers to adjust their rates so as to equalize natural or commercial disadvantages. Import and Domestic Rates--Clay, 132 (135).

COMMODITY RATES.

Tariff held unreasonable in failing to provide for application of a commodity rate named therein to machinery set up on skids. Reparation awarded. *Gisholt Machine Co. v. C. & N. W. Ry. Co.* 147 (148).

Carriers expected to revise their commodity rates in harmony with Commission's determination in regard to class rates; and revised commodity rates must not exceed the aggregate of intermediate rates. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 221 (242, 247).

Adjustment in commodity rates between Memphis and Arkansas points over lines of four defendant carriers, competing as they do with each other, held reasonable as a whole. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (268).

The existence of a commodity rate on building stone from Sandstone and Banning, Minn., to Kansas City does not necessarily imply that there should have been a similar commodity rate on mixed shipments of dressed and polished stone and marble and unpolished stone from St. Paul. *Drake Marble & Tile Co. v. C. G. W. R. R. Co.* 422 (425).

COMMUNITY OF INTEREST.

Water carriers not in corporate relation to carriers by rail, but operated in community of interest with railroads through interlocking stocks, directors, or officers on June 30, 1914. Exhibit 3. Relations between Carriers by Rail and by Water, 1 (69).

COMPARATIVE RATES. See also ANALOGOUS ARTICLES.

Alfalfa feed takes the rates applicable to corn. *Merriam & Millard Co. v. C. & A. R. R. Co.* 485 (486).

Brick, building: "Sand-struck" and "water-struck." Under present tariffs rates are equal. *Duffney Brick Co. v. B. & M. R. R.* 118 (121).

Brick, enameled: Rates on, from South River, N. J., to points in official classification territory are unjustly discriminatory to extent that they exceed rates on glazed terra cotta for building purposes between same points. *American Enameled Brick & Tile Co. v. R. R. R. R. Co.* 653 (655-656).

Brick, paving or facing, compared with vitrified brick and common building brick. Defendant expected to refund overcharges. *Abel & Roberts v. M. P. Ry. Co.* 211 (212).

COMPARATIVE RATES—Continued.

Coal: Relationship between rates on lump coal and rates on coal of other kinds can not be fixed upon the present record. There appears to be no uniformity among carriers in territory involved in making rates on different kinds of coal, except that rates on lump coal are commonly observed as maxima. *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 94 (106).

Crossties, cypress: Rate on hewn cypress crossties from Bowie, La., to Eureka, Tex., found unreasonable to extent that it exceeded the rate on cypress lumber. *Bowie Lumber Co. v. M. L. & T. R. R. & S. S. Co.* 609.

Cyanamid: Rate on imported cyanamid from Savannah and Brunswick, Ga., to Dothan, Ala., found unreasonable to extent that it exceeded the rate applicable to other fertilizer materials. *American Cyanamid Co. v. C. of G. Ry. Co.* 476 (477).

Flour, wheat, buckwheat, corn, and pancake: Parties satisfied with present adjustment, under which these commodities take equal rates, and proceeding discontinued on motion of complainant. *Davis Milling Co. v. A., T. & S. F. Ry. Co.* 198 (199).

Irons, dog: Rate on cast-iron dog irons from Rome, Ga., to Memphis, Tenn., found unreasonable to extent that it exceeded rate on grates and grate fixtures. Reparation awarded. *Orgill Bros. & Co. v. N., C. & St. L. Ry.* 513.

Kraut brine: Rate on, in mixed carloads with kraut, or with kraut and pickles, found unreasonable to extent that it exceeded rate on kraut, or kraut and pickles mixed in carloads. Reparation awarded. *Heinz Co. v. P. M. R. R. Co.* 622.

Logs: Higher rates on hardwood bolts or pine logs than on hardwood logs, not justified, and rates must be revised to conform with rates on hardwood logs prescribed in previous cases. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 303 (304-305).

Lumber: Maintenance of higher rates on pine and cypress lumber than on hardwood lumber from points in southeastern Arkansas to Memphis subjects the former description of traffic to undue prejudice. *Id.* (306).

Novelties, burnt pyrographic wooden: Charges collected on, from New Chicago, Ind., to Tacoma, Wash., at the double first-class rate applicable to wooden boxes, found unreasonable to extent that they exceeded charges that would have accrued at one and one-half times first class. *Sprouse & Son v. N. P. Ry. Co.* 347 (348).

Pitch, candle: Rate on candle pitch from Ivorydale, Ohio, to South Bend, Ind., found unreasonable to extent that it exceeded rate on coal and gas house pitch, coal and gas house tar, and petroleum pitch and petroleum tar. Reparation awarded. *Ford Mfg. Co. v. C., C. & St. L. Ry. Co.* 489.

Signs, vitrolite: Double first-class rating on bent vitrolite signs from Chicago, Ill., to points in western classification territory, which is the rating applicable on glass signs, not found unreasonable. *United Cigar Mfrs. Co. v. G., C. & S. F. Ry. Co.* 737.

Staves and heading: As a general rule rates on staves and heading equal or exceed rates on lumber, and record does not sustain contention that rates lower than on lumber should be applied. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 303 (305).

Tile, hollow fireproof building: Rate on, not found unreasonable. Rates formerly in effect on fire brick, pressed brick, paving brick, paving tile, and sewer pipe cited. Building tile is more fragile than brick and does not load as heavily. *Chattanooga Sewer Pipe & Fire Brick Co. v. C. of G. Ry. Co.* 615 (616).

COMPENSATION.

For compensation to be just, it must provide a reasonable return upon the value of property devoted to public use. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (541).

COMPETING LINES.

The existence of a lower rate over other routes and subsequent establishment of same over route of movement to meet rates by way of competing routes do not warrant condemnation of rate charged. *Seidel Lumber Co. v. M. P. Ry. Co.* 670 (671).

COMPETITION.

It is well settled that competition compelling low rates from one point is a defense to a charge of undue preference in not maintaining as low rates from another point not affected by such competitive conditions. *Henderson Cotton Mills v. L. & N. R. R. Co.* 399 (405).

Carriers allege that rates on cotton seed to Memphis are influenced not only by market and carrier competition but also by actual wagon competition and by actual or potential competition by water not only on the Mississippi River, but on other streams that thread this cotton-growing region. *Capital City Oil Co. v. Y. & M. V. R. R. Co.* 141 (145).

Market:

It appears that Georgia producers have encountered more active competition since the reduction in the import duty on clay. *Import and Domestic Rates—Clay*, 132 (136).

Defendants can not consistently hold open New England markets to complainant's competitors in the eastern group while denying to complainant at Perth Amboy access to western markets on an equal rate basis with these same competitors. *Purdee Works v. C. R. R. Co. of N. J.* 162 (165).

Rates on marble from Tennessee to Kansas City and St. Paul are adjusted with relation to competition that Tennessee marble encounters in comparison with marble from Vermont, Massachusetts, Georgia, and other points. *Drake Marble & Tile Co. v. N. Y., O. & W. Ry. Co.* 392 (398).

Commercial competition is responsible for a standard of rates in the light of which rates involved must be considered, even if it had been found that these rates were actually noncompensatory. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (543).

It appears that so-called by-product coke can be sold at a price so low that furnace coke can not compete with it. Such competition is not a factor with which transportation conditions can be concerned, but competition of coke in question with coke from Connellsville must be considered. *Id.* (545).

Westbound shipments of agricultural implements and iron water gates into Omaha are made by manufacturers; eastbound shipments, if any, by jobbing merchants; and it does not appear that the two movements could be competitive. *Heider Mfg. Co. v. C. G. W. R. R. Co.* 556 (558).

There is active competition between Sioux City, Iowa, shippers and shippers located in the State of South Dakota for the trade of that State in such commodities as commonly move by express. *Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co.* 703 (719).

Potential:

Rates to some points east of the Shreveport group are influenced by potential water competition on the Mississippi River. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (242).

COMPETITION—Continued.

Potential—Continued.

Red River and Ouachita River have not been navigated for many years.

Active water competition no longer exists, and "the extent to which potential water competition should be recognized at the present time is not clear from the record." Commission must act upon the facts as it finds them. *Thompson, Ritchie & Co. v. V., S. & P. Ry. Co.* 287 (292).

The mere fact that Hickman, Ky., is a river point is not sufficient to justify lower rates to that point than to intermediate stations. *Bituminous Coal to Mississippi Valley Territory*, 378 (391).

The Tennessee River, on which Chattanooga is located, is navigable, but apparently the boat service has not yet sufficiently developed to affect substantially the rail rates from Cincinnati to Chattanooga. *Casey-Hedges Co. v. C., N. O. & T. P. Ry. Co.* 569 (571).

Railroad:

Competition in the Willamette Valley of Oregon is keen. Electric lines closely parallel defendant's lines, but their rates are with few exceptions no lower than scale charged on line of the Southern Pacific Company. *Gile & Co. v. S. P. Co.* 193 (197).

Extent of competition of carriers from Atlanta, Ga., to Knoxville, Tenn., is not disclosed, and it is not shown that the rate from Atlanta is less than a reasonable rate. *Knoxville Overall Co. v. L. & N. R. R. Co.* 330 (332).

Competition of the Illinois Central from Memphis to St. Louis and other points does not, as a matter of law, justify the St. Louis & San Francisco in carrying a lower rate from Memphis than from its equidistant Oklahoma points to Kansas City. *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co.* 497 (502).

Rates to El Paso influenced by competition of water-and-rail routes from the east and of more direct lines from St. Louis, and, therefore, are not criteria of reasonable rates to Gallup, N. Mex., where such competition is not encountered. *Crunden-Martin Mfg. Co. v. M. P. Ry. Co.* 631 (632).

Water:

Rates both to and from Portland have been established under influence of water competition, and present rates to Willamette Valley points found justified. *Gile & Co. v. S. P. Co.* 193 (197).

There is at present no active water competition from New Orleans to the Shreveport group. It is asserted that the withdrawal of water competition on the Red, Black, and Ouachita rivers was due to failure in recent years of the cotton crop following the invasion of the boll weevil. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (242).

Competition of the Mississippi River is just as much to be reckoned with from Memphis as from New Orleans, and does not afford ground for a difference in rates for like distances from points east of the Shreveport group which are influenced thereby. *Id.* (242).

Rates from St. Louis and East St. Louis to southern and southeastern Missouri are depressed by water competition on the Mississippi River. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (269).

There is an actual movement of coal by water to Slidell, La., from mines in Alabama and it is necessary for carriers to maintain the New Orleans basis of rates to this point in order effectively to meet the competition of water lines. *Bituminous Coal to Mississippi Valley Territory*, 378 (389).

COMPETITION--Continued.

Water--Continued.

Rates on whisky from Cincinnati to Memphis are said to have been compelled by water competition which does not obtain from other distilling points on the Southern Ry. in Kentucky. The application of southern classification on traffic to Helena is attributed to less intense competition between rail and all-water carriers. *Hessig-Ellis Drug Co. v. L. & N. R. R. Co.* 459 (463, 466).

Competition of the Mississippi River has ceased to exist on the movement of cottonseed oil. *Oklahoma Cottonseed Crushers' Assn. v. M. K. & T. Ry. Co.* 497 (502).

Advantage enjoyed by Nashville over Chattanooga in respect to rates from Cincinnati is due largely to water competition on the Ohio and Cumberland rivers. *Casey-Hedges Co. v. C., N. O. & T. P. Ry. Co.* 569 (571).

Lines east of the Mississippi River maintain low competitive rates to New Orleans on hardwood from Memphis and intermediate territory, and this water competition, together with competition from producers east of the Mississippi, caused correspondingly low rates to New Orleans from hardwood area in Louisiana and Arkansas. *Major Stave Co. v. M., D. & G. R. R. Co.* 573 (576).

COMPETITIVE CONDITIONS.

Concordia, Kansas, is beyond the sway of competitive influences which have determined the present adjustment of rates to Missouri River cities, and which in turn have been reflected at Topeka, Lincoln, and Beatrice. *Concordia Commercial Club v. A., T. & S. F. Ry. Co.* 675 (684).

COMPRESSION.

Hay compressed to an average density of 60 pounds per bale can be loaded to proposed minima in all cars, except cars 34 feet long or less. *Hay Minimum Weights*, 167 (169).

Proposed elimination of certain stations from which cotton may be shipped for compression at Weleetka, Okla., restricting the movement of cotton for compression originating at such stations to compresses at Oklahoma City or Sapulpa or compresses other than Weleetka, will not result in undue prejudice to the Weleetka compress or to shippers whose cotton is compressed under carrier's privilege. *Cotton Concentration at Weleetka, Okla.*, 181 (184).

The Weleetka compress has no vested right to be selected by respondent carrier as an agency for doing compression for which respondent pays, and is apparently not a party to the transportation, either as shipper, consignee, or otherwise. *Id.* (184).

CONCEALED LOSS.

The primary purpose of packing requirements involved is to prevent what is technically known as concealed loss; i. e., loss by theft in transit, which is not discovered until after delivery of shipment to consignee, because of the fact that there is no indication on the package that it has been tampered with. *Reynolds Tobacco Co. v. A. & S. Ry. Co.* 371 (373).

CONCURRENCE.

Rate on news print paper from International Falls, Minn., to Denver, Colo., found unreasonable to extent that it exceeded a joint rate contemporaneously in force but in which initial carrier had not filed a concurrence. *Minnesota & Ontario Power Co. v. C., St. P., M. & O. Ry. Co.* 481 (482).

CONFISCATORY RATES.

The term confiscatory rates understood as synonymous with the term noncompensatory rates. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (541).

CONFISCATORY RATES—Continued.

Where traffic involved is only a portion of the traffic moving over the originating division, and only a small portion of coal and coke traffic moving over the line, which, in turn, is only a small part of the entire coal and coke tonnage moving over the entire system, a claim that rates are confiscatory is not established until it be shown that rates on other traffic moving over the originating line are reasonably remunerative and that revenue derived from other coal and coke traffic moving over the line is adequate. *Id.* (542).

If the United States court should hold that the intrastate express rates are not confiscatory, it would still be the duty of this Commission to require the removal of an unjust discrimination against interstate commerce. *Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co.* 703 (722).

CONNECTING LINES.

Commission does not think that the law imposes upon a railroad the duty in all cases to give to mines on a connecting independent railroad the same rates to market that it gives to mines on its own branch lines in the same region. *Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co.* 449 (452).

CONSTITUTION OF UNITED STATES.

Interstate rates imposed under the authority of the Federal Government are subject to the requirements of the fifth amendment, the plain language of which leaves no uncertainty as to its scope. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (541).

CONTAINERS. *See also* TANK CARS.

Rate on sulphuric acid in iron drums from Grasselli, Ala., to Morganton, N. C., no higher than rate on like traffic in tank cars, prescribed. Reparation awarded. *Kistler, Lesh & Co. v. A. G. S. R. R. Co.* 478 (480).

CONTRACT.

Predecessor in title of the Rock Island contracted with the city of Memphis to give Memphis the same rate structure in and out of Arkansas as had Hopefield, Ark., a point just across the river; but this contract is no longer determinative of the reasonableness of the present rate structure. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (258-260).

Contention that it is unreasonable for respondent to increase its rates in violation of an understanding or contractual obligation is contrary to well-settled principles. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (549).

COST OF MAINTENANCE.

Cost of maintenance west of the Mississippi River is exceptionally high, for transportation conditions within Arkansas are less favorable and cost of service greater than in any other state through which defendants run. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (266).

COST OF SERVICE.

It appears that all coal rates in the St. Charles and Appalachia coal regions were originally made without any consideration of cost of service or any transportation or traffic condition other than competition. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (543).

CUSTOMS DUTY.

Although ocean and rail lines offset reduction in import duty by a corresponding increase in their rates on imported clay, it appears that Georgia producers have encountered more active competition since this reduction. *Import and Domestic Rates—Clay*, 132 (136).

Difference between import rate from New York and domestic rate from Georgia does not exceed the customs duty, except to Steubenville, East Liverpool, Cleveland, and Detroit. *Id.* (136).

DAMAGES.

- Loading requirement prescribed by Commission resulted in an increase in the carload minimum which materially increased the per car earnings. Under such circumstances no reparation should be awarded. *Arlington Heights Fruit Exchange v. S. P. Co.* 88 (92).
- To award reparation between the date of service of order and its effective date would in substance be to disregard the statutory restriction and to require that rates prescribed go into effect before the statutory period. *Id.* (93).
- Reparation denied because shipments of zinc concentrates on which reparation was asked exceeded in value per ton the value of ore on which rate prescribed was predicated. *Wellington Mines Co. v. C. & S. Ry. Co.* 202 (207).
- Nonconformity of tariff to Commission's rules, in absence of proof of damage to shipper, does not afford a basis for an award of reparation. *Ennis, Brown Co. v. A., T. & S. F. Ry. Co.* 209 (210).
- Misquotation of a rate affords no basis for an award of reparation. *Utah Wholesale Grocery Co. v. N. & W. Ry. Co.* 345 (346).
- In a case predicated upon unjust discrimination in rates, the damage suffered, if any, is not always measurable by the exact difference in rates; it may be more or less. Mere diminution or loss of prospective trade profits does not alone afford a basis for reparation under the act. The fact of damage as well as the amount must be satisfactorily established. *Brooks Coal Co. v. Wabash R. R. Co.* 426 (432).
- Claim for reparation on blackstrap molasses from Mobile, Ala., to Nashville, Tenn., dismissed because damage for which reparation can be awarded in discrimination cases was not shown to have been sustained. *Wilkes & Co. v. A. G. S. R. R. Co.* 447.
- Rate on used steel car trucks from Howe, Okla., to Plainview, Ark., found unreasonable on rehearing to a greater extent than in original report and additional reparation awarded. *Zelnicker Supply Co. v. C., R. I. & P. Ry. Co.* 475.
- Carriers not parties to record will be expected to participate in reparation awarded on shipments which moved over their rails. *Stearns & Culver Lumber Co. v. C., M. & St. P. Ry. Co.* 470 (472); *Minnesota & Ontario Power Co. v. C., St. P., M. & O. Ry. Co.* 481 (482).
- Parties: While complainants were not named in bills of lading, or freight bills, consignor was, in fact, their agent; and while complainants were not in the ordinary sense either consignors or consignees, they were in substance the true consignors and ultimately bore the freight charges, and the case, therefore, does not come within the rule which prohibits an award of reparation to a stranger to the transportation record. *Henderson v. M. L. & T. R. R. & S. S. Co.* 483 (484).
- Commission has no jurisdiction over claim for reimbursement on account of expenses incurred in arranging for a resale and delivery of shipment. *Colorado Fuel Co. v. M., K. & T. Ry. Co. of Tex.* 491 (493).
- Proof: Paid expense bill by itself is insufficient evidence as to who ultimately paid and bore freight charges. *Forbes Mfg. Co. v. L. V. R. R. Co.* 566 (567).
- Rescission of order: Orders awarding reparation vacated and complaints dismissed. *Swanson v. T. & P. Ry. Co.* 725 (730).

DELIVERY.

- Free delivery of cotton at Arkansas points and East St. Louis upon defendants' own rails, but not at Memphis where delivery is upon independent lines, does not constitute undue discrimination against Memphis. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (272).

DEMURRAGE.

Refund of demurrage charges denied as complainants' evidence does not satisfactorily establish their contention that no demurrage would have accrued if delivery had been tendered upon basis of the joint through rate. *Colorado Fuel Co. v. M., K. & T. Ry. Co. of Tex.* 491 (493).

Provisions of demurrage tariffs apply in their entirety to all cars, unless specifically excepted, without reference to the quantity or kind of freight contained in them. *Woolson Spice Co. v. P. Co.* 583 (585).

All demurrage on cars detained at Ludington during period of controversy must be refunded; but demurrage lawfully assessed during period named thereafter must stand, as the tariff and its reissue were sufficient notice that reconsignment would have to be made within a reasonable time or demurrage would accrue on cars held awaiting orders. *Becker v. P. M. R. R. Co.* 739 (742).

Demurrage accruing on lumber by reason of bark's inability, during the period it was denied loading space at defendant's wharf, to take the lumber from defendant's cars, should be refunded, upon a proper showing as to party entitled to refund. *Gunderson v. G. & S. I. R. R. Co.* 747 (751).

Unpaid charges accruing at Mobile, Ala., on shipment of grease intended for export while carriers awaited instructions should be promptly collected. *Kirk v. M., K. & T. Ry. Co. of Tex.* 755 (756).

DENSITY OF TRAFFIC. *See also* Low Rates.

In making rate comparisons, the differences in operating conditions and traffic density in respective territories in which rates apply should be considered. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (231).

DIFFERENTIALS.

When average distance and percentage relationship of distances from Memphis and St. Louis are considered the differentials Memphis under St. Louis to Texas common points appear to be reasonable; but to southern Arkansas and Louisiana points, differentials on a somewhat higher scale would be more appropriate, because the Memphis distance is a considerably lower percentage of the St. Louis distance than in movement to Texas points. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (236).

A differential on a 20-cent scale, Memphis under St. Louis, is proper at Texarkana, Ark., and this difference should be gradually decreased with increased distance until a differential on a 10-cent scale is reached at Lake Charles, La. *Id.* (236).

Rates from points in Louisiana to Memphis are from 5 cents to 18 cents below rates from same points to St. Louis. For so great a difference in distance, which averages about 250 miles, a differential of 5 cents would appear to be too small. *Id.* (243).

To points 276 to 300 miles, inclusive, from Memphis class differentials Memphis under St. Louis should be on a 20-cent scale. To points more distant by direct lines this scale should be decreased and to points less distant increased 1 cent for each 15 miles. *Id.* (244).

Reasonable St. Louis differentials over Memphis to Shreveport and Alexandria prescribed. Rates from Kansas City should not exceed rates from St. Louis here prescribed. *Id.* (246-247).

Reasonable maximum rates from Memphis to Marshall and Jefferson and appropriate class differentials, St. Louis over Memphis, prescribed. *Cities of Marshall and Jefferson, Tex., v. T. & P. Ry. Co.* 249 (254).

DIFFERENTIALS—Continued.

Rates from Memphis to southern Arkansas points should be made upon differentials under rates from St. Louis to same Arkansas points as prescribed; and differentials on other classes should be determined on basis of percentage which that class bears to the first-class rate. In determining commodity rates the differential should be same percentage of differential in rate on class to which commodity belongs as percentage commodity rate is of class rate. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (270).

Joint rates on lumber from eastern Oregon points to various interstate destinations based on differentials over rates from Spokane, Wash., prescribed. *Eastern Oregon Lumber Producers' Assn. v. C., B. & Q. R. R. Co.* 316 (320).

Joint rates from mines on the Cumberland Railroad to northwestern territory and southeastern territory ought not to exceed group rates applying from L. & N. branch lines by more than 5 cents. *Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co.* 449 (454).

Reasonable maximum rates on coal from St. Charles and Appalachia, Va., will be such as do not exceed rates from Middlesboro-Jellico district to same destinations by more than differentials herein fixed. Maximum rate on coke from Appalachia group to Chicago will be \$2.50 per ton. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (545).

Rates on coal from the Appalachia, Va., group shall not exceed rates from Middlesboro-Jellico district to same destinations by more than 15 cents per ton. *Id.* (550).

The differential fixed as part of a general readjustment of rates on fresh meats and packing-house products from Wichita, Oklahoma City, and Fort Worth furnishes no precedent for the establishment of differentials in rates on bulk salt from Kansas mines to Oklahoma City and Fort Worth nor does the record disclose the necessity thereof. *Swift & Co. v. U. P. R. R. Co.* 665 (669).

Rates on various commodities from certain points to Concordia, Kans., differentially adjusted in relation to rates from same points to Salina. *Concordia Commercial Club v. A., T. & S. F. Ry. Co.* 675.

DIRECTORS. See INTERLOCKING DIRECTORATES.

DISCRIMINATION.

Maintenance of lower rates on import traffic is not of itself unlawful, but unjust discrimination is a question of fact to be determined by the circumstances and conditions of each case. *Import and Domestic Rates—Clay*, 132 (139).

Comparison of actual rates paid with lower paper rates which competitors would theoretically have to pay for same distance fails to prove undue discrimination. *Capital City Oil Co. v. Y. & M. V. R. R. Co.* 141 (146).

DISMISSAL.

Parties in interest expressed satisfaction with present adjustment, under which wheat flour, buckwheat flour, corn flour, and pancake flour take equal rates, and proceeding discontinued upon motion of complainant. *Davis Milling Co. v. A., T. & S. F. Ry. Co.* 198 (199).

DISTANCE. See also AVERAGES.

The fact that normal transportation costs decline per ton-mile the greater the distance traversed is too firmly established to admit that cottonseed traffic is an exception to the general rule without proof very much stronger than any the record affords. *Capital City Oil Co. v. Y. & M. V. R. R. Co.* 141 (146).

Differential should be gradually decreased with increased distance. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (236).

Distance alone considered, mines on the Cumberland Railroad seem to be entitled to same rates as L. & N. mines in groups 1 and 2; but a slightly higher charge is warranted on account of the two-line haul. *Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co.* 449 (454).

DISTANCE—Continued.

The shorter distances from Hannibal, Mo., and Quincy, Ill., to St. Louis, Mo., than from Keokuk, Iowa, warrant some differences in rates. *National Pickle & Canning Co. v. C., B. & Q. R. R. Co.* 629 (630).

Distances from Mississippi River and points east thereof to Concordia and Salina are about equal and conditions which affect rates to both points are substantially the same. *Concordia Commercial Club v. A., T. & S. F. Ry. Co.* 675 (684).

Differences in distances via the several routes from New Orleans to Concordia, and to Salina, Kans., are so small that if distance alone were controlling they would be negligible. *Id.* (685).

DISTURBANCE OF ADJUSTMENT.

Disturbance of the Shreveport group not justified. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (244, 247).

DIVISIONS.

Question of, left for carriers to determine. *Eastern Oregon Lumber Producers' Asso. v. C., B. & Q. R. R. Co.* 316 (320).

Division of a joint rate which a carrier accepts is not a fair measure of its local rate. *Pillsbury Flour Mills Co. v. G. N. Ry. Co.* 353 (358).

Reasonable divisions to the Interstate Railroad out of such through rates as are permitted upon reconsideration of I. & S. dockets 71 and 321 fixed at 15 cents per ton on coal and 18 cents per ton on coke. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (534).

Cancellation of transit regulations, the only justification therefor being a disagreement as to divisions, not justified. If interested carriers are unable to reach an agreement, further hearing may be arranged for, and divisions prescribed. *Grain Transit Rules at Buffalo, N. Y.*, 580 (582).

DOMESTIC RATES. *See also* IMPORT AND DOMESTIC.

Domestic rates on clay from producing points in Georgia to central freight association territory not shown to be unjustly discriminatory. *Import and Domestic Rates—Clay*, 132 (140).

Rates on domestic brewers' rice from Houston, Tex., to central freight association territory and points in Illinois, which are certain differentials over rates from New Orleans, La., to same points, not found unduly prejudicial to Houston. *Mutual Rice Trade & Development Asso. v. I. & G. N. Ry. Co.* 149.

EARNINGS.

Neither rate comparisons nor evidence of earnings per ton-mile or per car-mile are sufficient to show that rates from Sulphur Mines, La., to Wisconsin and Michigan points are unreasonable. *Pulp & Paper Mfrs. Traffic Asso. v. Belt Ry. Co.* 360 (362).

ELECTRIC LINE. *See* THROUGH ROUTES AND JOINT RATES.

EMBARGO.

Retroactive application of transit arrangements at Columbus, Miss., and Reform, Ala., denied, although it was shown that an embargo had been laid at Tuscaloosa, Ala., on account of congestion of cars. *Meeds Lumber Co. v. A. C. Ry.* 337 (338).

EMPTY MOVEMENT.

Charge of \$6 per car on empty refrigerator cars from Toledo, Ohio, to Rose Center, Mich., for return loading with ice found unlawful. Refund directed. *City Ice Delivery Co. v. P. M. R. R. Co.* 589.

EQUALIZING RATES.

It is not within Commission's province to require carriers to adjust their rates so as to equalize natural or commercial disadvantages. *Import and Domestic Rates—Clay*, 132 (135).

EQUIPMENT.

An additional charge may be just and reasonable when refrigerator cars are used for transportation of ice, but it should be added to the rate for transportation of the commodity and not imposed as a mileage charge for the movement of the empty car. *City Ice Delivery Co. v. P. M. R. R. Co.* 589 (591).

ERROR.

Tariff held unreasonable in failing to provide for application of a commodity rate named therein to iron-working machinery set up on skids. Omission unintentional. Reparation awarded. *Gisholt Machine Co. v. C. & N. W. Ry. Co.* 147 (148).

Rate on old rails from Albany, N. Y., to Newberry, Pa., found unreasonable and reparation awarded. Newberry is a part of Williamsport, Pa., and higher rate to Newberry is said to have been the result of a clerical error as it was not defendants' intention to make different rates to different parts of Williamsport. *Joseph & Bros. Co. v. D. & H. Co.* 217.

Shipper intended to consign shipment to Greenville, S. C., but inadvertently consigned it to Greensboro, N. C., at which point demurrage accrued. It was then reconsigned to Greenville, S. C. Service performed was consistent with complainant's instructions and charges based on legal tariff rates held not unreasonable. *Pocahontas Coke Co. v. N. & W. Ry. Co.* 218-219.

Rate on mussel shells from Muscatine, Iowa, to New York, N. Y., found unreasonable and reparation awarded. As the result of a clerical error in the reissue of a tariff, the rate upon which reparation is based was canceled, leaving a higher rate applicable. *Kath Co. v. C., R. I. & P. Ry. Co.* 613.

ESTIMATED WEIGHT.

Estimated weight of 120 pounds per standard crate on cabbages from Coleman and Sumterville, Fla., to New York, N. Y., found unreasonable to extent that it exceeded 115 pounds. Shippers of cabbages from the Coleman district are entitled to estimated weights fairly adjusted to actual weights of their shipments. *National League of Commission Merchants v. A. C. L. R. R. Co.* 563 (565).

EVIDENCE.

Commission is not confined in its consideration to facts and figures specifically stated pertaining to matters referred to in the record, but may consider and, in support of its conclusions, may rely upon actual facts and figures pertaining to matters referred to in the record, as verified by tariffs and other official documents and records which the law requires carriers to file with it. *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co.* 497 (500-501).

There is no merit in contention that certain cost figures filed in the record as Commission exhibits and on which certain conclusions were founded are not properly in the record. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (539).

Testimony as to the effect an increase in rate will have on the business of shippers involved is always relevant, but should be established by direct evidence as distinguished from opinion testimony. *Id.* (549).

The mere statement of an opinion that a certain increase in rates will put shippers out of business is not conclusive, since this fact can be established by direct proof of actual conditions, and in many other ways. *Id.* (549).

Bill of lading, expense bill, and a copy of an invoice purporting to cover shipment offered in evidence. Defendants consented that information as to composition of shipment involved might be furnished in affidavits by officers or employees of complainant, to be filed subsequently to hearing. No affidavits filed and complaint dismissed. *Marshalltown Buggy Co. v. Wabash R. R. Co.* 633 (634).

EXHIBITS.

1. Companies owning and controlling vessels and steamship lines, through the operation of which freight is transported between Atlantic and Pacific ports partly by water and partly by rail, or in the coastwise and foreign trade of the United States. *Relations between Carriers by Rail and by Water*, 1 (7).
2. Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914. *Id.* (22).
3. Names of carriers by water which on June 30, 1914, had no corporate relation to carriers by rail, but which were operated in community of interest with railroads through interlocking stocks, directors, or officers. *Id.* (69).
4. Section (A). Prevailing rates upon principal commodities carried wholly by water via Panama Canal between Atlantic and Pacific ports of the United States, and by vessels not under United States registry from New York to Callao, Peru, and Valparaiso, Chile. *Id.* (72).
Section (B). Comparison of water rates on freight carried by vessels in the coastwise trade of the United States with water rates on similar freight for similar distances carried by vessels in the foreign trade of the United States under United States registry and under foreign registry. *Id.* (75).

EXPEDITED SERVICE.

In view of the special and expedited service provided, proposed increased rate from Provincetown, Mass., and certain other points, found justified. *Fish to New York*, N. Y., 333 (334).

EXPORT RATES.

Rates on harness and saddlery from St. Joseph, Mo., to Atlantic and Gulf ports, for export, not found unreasonable. It is not shown that when normal business conditions have been restored harness and saddlery will move in carload lots, nor does it appear that such trade has yet so developed as to become a factor in the construction of export rates. *Wyeth Hdwe. & Mfg. Co. v. A., T. & S. F. Ry. Co.* 697 (700).

Through inadvertence shipper failed to indorse "for export" on the bill of lading covering carload of grease from Dallas, Tex., to Mobile, Ala., and exported to Havana, Cuba; but the character of a shipment and not accidents of billing determine its nature, and reparation is awarded on basis of the export rate legally applicable. *Kirk v. M., K. & T. Ry. Co. of Tex.* 755, 756.

EXPRESS RATES.

Express rates between Sioux City, Iowa, and points in South Dakota not found unreasonable; but the maintenance of higher interstate rates between Sioux City and points in South Dakota than between points in the same state constitutes undue prejudice and unjust discrimination against Sioux City, which defendants are ordered to remove. *Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co.* 703.

The right to a proper relation of express rates is not qualified by differences of freight service. *Id.* (720).

More than 90 per cent of the express business of the country is now being handled under the system established by this Commission. *Id.* (720).

FIFTH AMENDMENT. *See CONSTITUTION OF UNITED STATES.*

FLOOD CONDITIONS.

Rainfall and consequent flood damage in Arkansas exceeds that in other states while flood conditions along the west bank of the Mississippi River each Spring are costly to a degree. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (266).

FOLLOW LOT.

Two 36-foot cars furnished instead of 50-foot car ordered and charges collected on basis of carload rate and minimum for one car and less-than-carload rate for the other. "Follow-lot" rule not assailed. Charges not found unreasonable. *Lalanc & Grosjean Mfg. Co. v. L. I. R. R. Co.* 637.

FOREIGN TRADE.

Comparison of water rates on freight carried by vessels in the coastwise trade of the United States with the water rates on similar freight for similar distances carried by vessels in the foreign trade of the United States under United States registry and under foreign registry. Exhibit 4, Section (B). *Relations Between Carriers by Rail and by Water*, 1 (75).

FREE DELIVERY. *See* DELIVERY.**FREE TIME.**

Contention that the provisions of demurrage tariffs involved are not applicable under rules quoted until a trap car has been detained by consignor or consignee beyond the free time allowed, not sustained. *Woolson Spice Co. v. P. Co.* 583 (584).

FURNACE ALLOWANCE. *See* ALLOWANCES.**GROUP RATES.**

Broadening of competitive fields is often helpful, both in development of commerce and in development of traffic; but when carriers undertake to lay aside transportation conditions and to create a rate relationship based largely on commercial factors, artificial and undue advantages for some shippers to the prejudice and disadvantage of others must be avoided. *Pardee Works v. C. R. R. Co. of N. J.* 162 (165).

Relationship between the so-called inner and outer groups of coal mines in Illinois east of St. Louis, discussed. *Coal to Glencoe, Mo.*, 190 (191).

Shreveport group excepted from a strict compliance with mileage scale prescribed, and in applying the mileage scale to points therein, the average distance to Shreveport, Monroe, and Alexandria should control rather than the distance to each individual point. Points within the triangle of which Shreveport, Monroe, and Alexandria are the apices, and points on lines forming its sides should also be included in the Shreveport group and should take same rates. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (244).

The fact that eastern Oregon mills are accorded substantially same rates as the Spokane group to destinations on and via Union Pacific lines is not necessarily a reason for their being placed in the Spokane group or accorded related rates on traffic to destinations on and via the Northern Pacific and the Great Northern railways. *Eastern Oregon Lumber Producers' Asso. v. C., B. & Q. R. R. Co.* 316 (319-320).

It is often desirable and proper to maintain groupings or relative adjustments that have been logically established and consistently maintained; but the fact that a carrier serving two points has elected to make its rates with regard or relation to other points can not be accepted as justification for depriving either of its natural location or for unjust discrimination. *Goldcamp Mill Co. v. N. & W. Ry. Co.* 433 (444).

Rates from mines on the Cumberland Railroad found unreasonable to extent that they exceeded the group rates applying from mines on branch lines of the L. & N. by more than 5 cents. *Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co.* 449.

In comparing group rates with other rates the average distance from the various points in the group to points of destination in question must be considered, and not the distances from points on the borders of the group. *Id.* (453).

GROUP RATES—Continued.

No sufficient reason appears why St. Charles should be grouped with Appalachia, Norton, and Toms Creek in making rates to the south or southeast, and taken out of this group when destinations involved are north of Ohio River *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (550).

St. Charles, Va., district included in the Appalachia group from which rates on coal shall not exceed rates from Middleboro-Jellico district to same destinations by a differential of more than 15 cents per ton. *Id.* (550).

Rates applicable from operations on the Interstate Railroad shall be the group rates applicable from the Appalachia group. *Id.* (552).

All group adjustments necessarily involve some inequality, but are not to be disturbed unless rates from particular points are shown to be unreasonable or unduly prejudicial. *Major Stave Co. v. M., D. & G. R. R. Co.* 573 (578).

ICING.

Discontinuance of absorption of bunker icing charges on oysters from Atlantic seaboard to western points justified as to shucked oysters in carloads but not justified as to shucked oysters in less than carloads, and oysters in the shell in carloads. *Platts v. N. Y., N. H. & H. R. R. Co.* 690.

IMMUNITY. *See* WITNESSES.

IMPORT AND DOMESTIC.

Import rates on clay through north Atlantic ports and Gulf ports to points in central freight association territory now shown to be unjustly discriminatory against domestic clay mined in Georgia and shipped to same destinations on higher domestic rates. *Import and Domestic Rates—Clay*, 132.

Established principle that publication of import rates on certain traffic lower than on similar domestic traffic does not of itself constitute unjust discrimination, reaffirmed. *Id.* (138).

Where rates on imported brewers' rice from Galveston, Tex., to Chicago, Ill., Indianapolis, Ind., or other interior points, are more than 6 cents lower than rates on imported brewers' rice from New York to same points, it is unjustly discriminatory to charge higher rates on domestic than on import shipments from Galveston or Houston. *Mutual Rice Trade & Development Asso. v. I. & G. N. Ry. Co.* 149.

Imported sulphur now is almost a negligible factor in the American market, and domestic sulphur encounters practically no competition except from iron pyrites from Spain and elsewhere abroad. Increased rate on crude sulphur and brimstone from Atlantic ports, justified. *Union Sulphur Co. v. B. & O. R. R. Co.* 349 (351).

Rates from Sulphur Mines, La., to Wisconsin and Michigan points, established originally to permit movement of sulphur by rail from Sulphur Mines in competition with same commodity then moving from Sicily through Atlantic ports, not found unreasonable. *Pulp & Paper Mfrs. Traffic Asso. v. Belt Ry. Co.* 360 (362).

IMPORT RATES.

Rate on imported cyanamid from Savannah and Brunswick, Ga., to Dothan, Ala., found unreasonable to extent that it exceeded the rate applicable on other fertilizer materials. *Reparation awarded. American Cyanamid Co. v. C. of G. Ry. Co.* 476 (477).

Complaint alleging that charges on imported kainit from Fernandina, Fla., to points within same state were illegal in that interstate rates were applied instead of lower Florida intrastate rates, dismissed. *Virginia-Carolina Chemical Co. v. S. A. L. Ry.* 660.

INDUSTRIAL RAILWAYS.

Failure of defendant to pay a furnace allowance to Pittsburgh Steel Co. or its industrial railway, when such allowances were paid to complainant's competitors through their industrial railways, subjected the Pittsburgh Steel Co. and its industrial railway to unlawful prejudice. *Pittsburgh Steel Co. v. P. & L. E. R. R. Co.* 312 (315).

INJUNCTION.

Arkansas carriers have filed petitions to enjoin enforcement of state rates, and testimony does not show that rates in effect pending decision of court unduly discriminate against Memphis. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (233).

INSPECTION. See BILLING.**INTENTION.**

The matter of intention may be of importance under some circumstances, but it can not be controlling; and if such discrimination as the act condemns is not shown an order based upon a finding of wrongful intention would find no warrant in law. *Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co.* 703 (721).

INTERCORPORATE RELATIONSHIP. See also INTERLOCKING DIRECTORATES.

It appears that 121 railroads were interested in 86 carriers by water, the interest of 52 railroads being through intercorporate relationship; but 40 of the 86 carriers by water had no corporate relationship with any railroad, and 69 of the railroad were interested in these through interlocking stocks, directorates, and officers only. Relations between Carriers by Rail and Water, 1 (6).

Carriers engaged in water transportation (except ferry, lighterage, or other terminal service) and their corporate relation to railroad companies on June 30, 1914. Exhibit 1. *Id.* (8).

INTEREST.

Record does not establish date upon which freight charges were paid by complainant and therefore the award of reparation will be without interest. *Kath Co. v. C., R. I. & P. Ry. Co.* 613 (614).

INTERLOCKING DIRECTORATES. See also INTERCORPORATE RELATIONSHIP.

It appears that 121 railroads were interested in 86 carriers by water 40 of which had no corporate relationship with any railroad, and in which 69 of the railroads were interested through interlocking stocks, directorates, or officers only. Relations between Carriers by Rail and by Water, 1 (6).

Individuals and companies interested in or connected with carriers by water and by rail on June 30, 1914. Exhibit 2. *Id.* (22).

Water carriers not in corporate relation to carriers by rail, but operated in community of interest with railroads through interlocking stocks, directors, or officers on June 30, 1914. Exhibit 3. *Id.* (69).

INTERMEDIATE POINTS.

The incorporation of rule 77, Tariff Circular 18-A, in a tariff is a recognition of the rights of intermediate points under the long-and-short-haul rule and a published guaranty that those rights will be recognized and protected upon demand. *Drake Marble & Tile Co. v. C. G. W. R. R. Co.* 422 (423).

INVESTMENTS.

It is well settled that an increase in rates which are unreasonably low is not precluded by fact that investments were made in expectation that such rates would be continued. *Duffney Brick Co. v. B. & M. R. R.* 118 (122).

ISSUE.

Allegations concerning rules, regulations, and exceptions to classifications, with certain exceptions, are so general that carriers could not be put upon notice sufficient to require them to defend, and hence they are not properly in issue. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (274).

ISSUE—Continued.

Averments of complaint fail to state in technical terms an issue under section 3.

The carriers in their answers do not demur to the obvious technical defect in pleading, and made no objection at hearing to introduction of testimony the avowed purpose of which was to prove damages by discrimination; therefore it can scarcely be seriously contended that they were not fully advised of the nature and full extent of complainant's case. *Brooks Coal Co. v. Wabash R. R. Co.* 426 (428-429).

Under pleadings the rate from every point of origin and destination involved was in issue, and testimony pointing out that the Oklahoma blanket had been developed more by adding points nearer to the destinations than by adding points farther away, and otherwise attacking the blanket adjustment, was relevant and material and therefore admissible. *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co.* 497 (500).

JOINT RATES.

Evidence not sufficiently clear and definite to enable Commission to determine what joint rates should be established on brick between stations on the B. & M. and connecting lines in lieu of those which may be unreasonable, and further hearing consolidated with hearing under I. & S. D. 826. *Duffney Brick Co. v. B. & M. R. R.* 118 (125).

Joint rates on lumber from Leesville, La., to points on lines of the Santa Fe system, in Texas and Oklahoma, found unjustly discriminatory. *Nona Mills Co. v. K. C. S. Ry. Co.* 125.

Baton Rouge is clearly entitled to joint rates on cotton seed made on the continuous mileage scale of the originating carrier, and defendants are expected to reform their tariffs to effect this result. *Capital City Oil Co. v. Y. & M. V. R. R. Co.* 141 (146).

Each carrier that participates in joint rates is responsible for discriminations resulting therefrom, even if its lines do not extend to the point preferred. *Henderson Cotton Mills v. L. & N. R. R. Co.* 399 (405).

Joint rate on tobacco from Richmond, Ky., via Norton and Lynchburg, Va., to Reidsville, N. C., held unreasonable in so far as it exceeded the combination based on Winchester, Ky., which should be applied in the absence of a joint rate. *Reynolds Tobacco Co. v. L. & N. R. R. Co.* 600 (607).

Proposed cancellation of, from producing points on various lines to points on the Santa Fe system in Texas, found not justified. *Lumber from Louisiana Points*, 688.

JURISDICTION.

No conclusion expressed on question whether the Commission has jurisdiction to require the establishment of joint rates from Aetna, Ind., through the Dominion of Canada to Concord Junction, Mass. *Aetna Powder Co. v. Wabash R. R. Co.* 199.

Commission has no jurisdiction over claim for reimbursement on account of expenses incurred in arranging for a resale and delivery of shipment. *Colorado Fuel Co. v. M., K. & T. Ry. Co. of Tex.* 491 (493).

The act to regulate commerce makes it the duty of this Commission to intervene between shippers and misdirected judgment of traffic officials where the result would so plainly produce an unlawful discrimination. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (544).

LAWFUL RATES.

Lawfully published interstate rates must be applied by carriers and paid by shippers on all through interstate traffic. *Lumber from Easton, Wash.* 188 (189).

LEGAL RATES.

Rate of three and one-half times first class on a spring delivery wagon with a fixed standing top, uncrated and without protection, from Chicago to Seattle, found legal. A lower rating was inapplicable because of specified ratings applicable to wagons with standing tops and because shipment was not properly crated or boxed. *Bon Marche v. C., M. & St. P. Ry. Co.* 611, 612.

LIMITATION OF ACTION.

Contention that as car was placed on siding at 5.15 p. m., September 27, 1911, and informal complaint was filed with the Commission on September 27, 1913, presumably before 5.15 p. m., the claim is not barred, not sustained. Fractions of a day are not considered in computing periods of limitations, and the two-year period expired on September 26, 1913. *Navasso Guano Co. v. C., M. & St. P. Ry. Co.* 171.

Possession by complainant of original bills of lading and paid freight bills held not a prerequisite to filing of formal complaint; and, as formal complaint was not filed within a reasonable time after complainant was notified that claim could not be disposed of informally, claim for reparation must be considered to have been abandoned. *Coffeyville Vitrified Brick & Tile Co. v. M. P. Ry. Co.* 208.

Defendants rely upon nonjoinder of participating carrier, and barring of claim against such carrier by statute. Order entered against carrier defendant; but carrier not party defendant may participate in the refund. *Orgill Bros. & Co. v. N., C. & St. L. Ry. Co.* 513 (514).

Within two years after cause of action accrued a letter was received, with which was inclosed a statement claiming overcharge, which showed the commodity and its weight, points of origin and destination, and car number and initials. Former finding that "claim was presented informally" within two years after cause of action accrued, adhered to. *Sanguinetti v. U. P. R. R. Co.* 515 (516).

Formal complaint was not filed within a reasonable time after notice to complainant that formal complaint would be necessary and the claim must be considered to have been abandoned. *Detroit Stove Works v. Wabash R. R. Co.* 597 (599).

Claims not presented formally within two years after causes of action accrued nor within a reasonable time after complainants were advised that they could not be adjusted informally must therefore be held to have been abandoned. *Trexler Lumber Co. v. S. Ry. Co.* 753.

LOCAL RATES.

Increased local rates of the B. & M. on brick found justified. *Duffney Brick Co. v. B. & M. R. R.* 118.

Division of a joint rate not a fair measure of local rate. *Pillsbury Flour Mills Co. v. G. N. Ry. Co.* 353 (358).

Local rate on durum wheat from Duluth to Anoka, Minn., not found unreasonable. *Id.* (359).

Proportional rates on anthracite coal are in a number of instances, and especially to gateways, lower than the local rates; and it is not shown that the across-lake rate for local delivery at Milwaukee, which is higher than the proportional across-lake rate on traffic destined for beyond, discriminates unduly against Milwaukee. *City of Milwaukee v. C., M. & St. P. Ry. Co.* 363 (366).

LOCATION.

Cairo occupies an advantageous position as a distributing center for lumber moving from south to north, and competitive conditions have induced the establishment of relatively lower rates to that point than to other Ohio and Mississippi River crossings. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 303 (309).

LOCATION—Continued.

The history of rates on grain, grain products, and hay from Columbus, Cincinnati, and Ironton to West Virginia points and varying bases employed together with varying distance scales of rates adopted by defendant, furnish no justification for the apparent disregard of the natural advantages that belong to Ironton by virtue of its location. *Goldcamp Mill Co. v. N. & W. Ry. Co.* 433 (444).

Topeka, Beatrice, and Lincoln all have the advantage of proximity to the Missouri River, and rates to those points have been affected largely by their advantageous geographical location. *Concordia Commercial Club v. A., T. & S. F. Ry. Co.* 675 (684).

Commission has repeatedly held that it has no authority to remove by rate readjustments the disabilities of location. *Wyeth Hdwe. & Mfg. Co. v. A., T. & S. F. Ry. Co.* 697 (700).

Location of Sioux City, Iowa, with reference to South Dakota traffic. *Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co.* 703 (706).

LONG AND SHORT HAUL.

Applications of the Texas & Pacific for authority to continue lower rates over its circuitous line to Shreveport from Memphis, St. Louis, and related points and to Texarkana from New Orleans and related points than to intermediate points, granted. Similar relief granted in respect to rates from defined territories and other points east of the Mississippi River to Texarkana and Shreveport. *Cities of Marshall and Jefferson, Tex., v. T. & P. Ry. Co.* 249 (255).

In so far as applications seek authorization to maintain higher rates from and to Ruston than from and to the Shreveport group points, they are denied. *Thompson, Ritchie & Co. v. V., S. & P. Ry. Co.* 287 (295).

Rate between Pine Bluff and Little Rock which does not exceed that in effect from Pine Bluff to Memphis prescribed. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 303 (308).

Authority to continue a rate on cotton denims from Atlanta, Ga., to Knoxville, Tenn., lower than rates from Canton, Ga., and other intermediate points, denied. *Reparation awarded. Knoxville Overall Co. v. L. & N. R. R. Co.* 330.

Carriers authorized to continue rates on canned peas in packages from La Crosse, Wis., to St. Paul which are lower than those maintained from West Salem and intermediate points, provided present rates from intermediate points are not exceeded and that rates from said points do not exceed the lowest combination. *West Salem Canning Co. v. C. & N. W. Ry. Co.* 341.

Authority to continue rates on brimstone and crude sulphur from Baltimore, Md., to Cheboygan, Mich., which are lower than rates to Alpena, Mich., and other intermediate points, denied. *Union Sulphur Co. v. B. & O. R. R. Co.* 349.

Authority to make a general revision of rates from mines in Illinois, Kentucky, and Alabama granted upon condition that rates to intermediate points, except stations on certain weak lines, shall not exceed the distance scale prescribed. *Bituminous Coal to Mississippi Valley Territory*, 378 (384).

Weaker lines should be afforded a greater measure of relief in meeting rates in effect via their stronger competitors than would be granted were conditions more equal. *Id.* (386).

Authority granted to continue rates on coal from mines in Alabama to Greenville and Vicksburg, Miss., and Slidell, La., lower than rates to intermediate points. *Id.* (388-389).

Carriers whose lines are not less than 15 per cent longer than direct lines from same or competing mines should be allowed to meet rates of direct lines to certain junction points and to maintain rates to intermediate points on same basis that they have been authorized to maintain rates to points intermediate to Memphis; but no sufficient justification has been shown for granting relief to carriers whose lines are less than 15 per cent longer than direct lines. *Id.* (390).

LONG AND SHORT HAUL—Continued.

Hickman, Ky.: The mere fact that Hickman is a river point is not sufficient to justify lower rates to that point than to intermediate stations. *Id.* (391).

Defendants authorized to continue rates on marble from certain Massachusetts points through Waverly Transfer and Jersey City to St. Paul, Minneapolis, and Minnesota Transfer lower than rates from Waverly Transfer and Jersey City. *Drake Marble & Tile Co. v. N. Y., O. & W. Ry. Co.* 392 (396).

Fourth section relief in respect to rates on cotton piece goods from Texas and Mississippi points to eastern points, lower than rates from Henderson and other intermediate points, denied. *Henderson Cotton Mills v. L. & N. R. R. Co.* 399.

No evidence introduced which would justify a finding that the rate on bituminous coal from Marion, Ill., to Cedar Rapids, Iowa, was unreasonable and no damage shown to have been sustained on account of lower rate to West Rapids, Iowa, the next more distant station. *Peabody Coal Co. v. C. & E. I. R. R. Co.* 415 (416).

Rates on building stone from St. Paul to Kansas City held illegal to extent that they exceeded a rate from Sandstone and Banning, Minn., more distant points.

Reparation awarded. *Drake Marble & Tile Co. v. C. G. W. R. R. Co.* 422 (423).

Authority to continue rates on whisky and beer from New York and on whisky from Baltimore to Helena lower than rates to Memphis, denied. *Hessig-Ellis Drug Co. v. L. & N. R. R. Co.* 459 (468).

Generally speaking, relief will be granted where the distance via the indirect line or route is more than 15 per cent greater than the distance via the direct line or route. *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co.* 497 (512).

Departure from the long-and-short-haul rule does not prove the rate to the intermediate point unreasonable. *American Refining Co. v. T. & P. Ry. Co.* 559 (560).

Rate on petroleum cylinder stock from Okmulgee, Okla., to Amesville, La., exceeded the rate to New Orleans plus the rate from New Orleans back to Amesville by 27 cents per 100 pounds; and is found unreasonable to that extent. Reparation awarded. *Id.* (560).

Authority to continue rates on tobacco from Cincinnati and points in Kentucky to Winston-Salem, Reidsville, Danville, Martinsville, and South Boston which are lower than rates from intermediate points in Kentucky, denied. *Reynolds Tobacco Co. v. L. & N. R. R. Co.* 600.

Carriers assume that rates to intermediate points were and are unreasonable and ignores the fact that new departures from provisions of the fourth section would be created. Proposed increased rates are not reasonable merely because they rectify fourth section departures. *Coal to Cleburne, Tex.*, 617 (618).

Authority to continue rates on axles from St. Louis, Mo., to Marshalltown, Iowa, lower than rates from Macon and other intermediate points, denied. Defendants' route between points involved is not sufficiently circuitous to warrant such relief. *Marshalltown Buggy Co. v. Wabash R. R. Co.* 633 (634).

Authority to continue rates on clay from Edgar and Okahumpka, Fla., to points in Ohio lower than rates to Covington, Ky., and other intermediate points, denied. *Cambridge Tile Mfg. Co. v. A. C. L. R. R. Co.* 663.

LOSS IN TRANSIT.

Domestic rate on petroleum cylinder stock in tank car from Okmulgee, Okla., to Amesville, La., found unreasonable. At Amesville the outlet valve of tank was opened and contents leaked to ground, causing a complete loss; and rate charged was legally applicable, although shipment was to have been barreled and reshipped to New Orleans for export. *American Refining Co. v. T. & P. Ry. Co.* 559, 560.

LOW RATES.

It is well settled that an increase in rates which are unreasonably low is not precluded by the fact that investments were made in expectation that such rates would be continued in effect. *Duffney Brick Co. v. B. & M. R. R.* 118 (122).

Rates on lumber from Santa Fe system producing points in Louisiana to points in Texas and Oklahoma are not shown to be on an unduly low basis. *Nona Mills Co. v. K. C. S. Ry. Co.* 125 (130).

Memphis cottonseed market is one apparently differentiated from Baton Rouge and New Orleans by a variety of circumstances which make low rates for the short haul into Memphis warranted by reason of the extreme density of traffic. *Capital City Oil Co. v. Y. & M. V. R. R. Co.* 141 (145).

Rate yielding but 2.65 mills per net ton-mile can not upon any theory be held unreasonably high, and carrier not required to shrink an admittedly low rate for the purpose of bringing to its rails coal from mines not served by it. *Black Mountain Corp. v. L. & N. R. R. Co.* 153 (160).

It is not shown that the rate on cotton denims from Atlanta to Knoxville is less than a reasonable rate. *Knoxville Overall Co. v. L. & N. R. R. Co.* 330 (332).

Increased rates, published as a part of a general scheme to eliminate as far as possible so-called unremunerative rates, found justified. *Union Sulphur Co. v. B. & O. R. R. Co.* 349 (351, 352).

It is well settled that competition compelling low rates from one point is a defense to a charge of undue preference in not maintaining as low rates from another point not affected by such competitive conditions. *Henderson Cotton Mills v. L. & N. R. R. Co.* 399 (405).

Defendants state that rates on fresh meats and packing-house products in effect from 1902 to May, 1910, were low rates and the result of strong competition and rate wars; also that market competition, the concentrated character of the business, and control of large tonnage have rendered effectual the demands made for maximum service at minimum rates. *South St. Joseph Live Stock Exchange v. A., T. & S. F. Ry. Co.* 417 (421).

Competition causes low rates to New Orleans from the hardwood area in Louisiana and Arkansas. *Major Stave Co. v. M., D. & G. R. R. Co.* 573 (576).

South Dakota express rates are too low to be made the measure of interstate rates between Sioux City and South Dakota points. *Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co.* 703 (723).

LOWREY TARIFF.

Purpose of proposed increases is to place sand on the rate basis of the Lowrey tariffs; but no transportation reason was offered for excepting coal and grain from the Lowrey basis and not excepting sand. *Sand from Indiana Stations*, 321 (322, 324).

MAPS.

Stations in Kansas, Missouri, and Nebraska on the A., T. & S. F. Ry. *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 94 (99).

Stations in Kansas and Nebraska on the Missouri Pacific. *Id.* (108).

Stations in Nebraska on the C. & N. W. and the C., St. P., M. & O. Rys. *Id.* (113).

Location of the Black Mountain coal field and routes of carriers leading therefrom. *Black Mountain Corp. v. L. & N. R. R. Co.* 153 (154).

Location of southern Arkansas and Louisiana destinations involved and lines serving same. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (227).

Indicating location of lines in Arkansas and southern Missouri operating between Memphis and St. Louis and Arkansas and Missouri points. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (259).

MAPS—Continued.

Relationship of Shreveport, certain Texas points, and Fort Smith with respect to rates to destinations in Oklahoma. *Shreveport Chamber of Commerce v. K. C. S. Ry. Co.* 296 (297).

Showing relationship of mines on the Cumberland Railroad and the Louisville & Nashville lines in Kentucky. *Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co.* 449 (453).

Rate situation from Oklahoma producing points, and also from Memphis, Tenn., and certain Arkansas points with which Oklahoma points compete in the production of cottonseed oil, cake, meal, and hulls. *Oklahoma Cottonseed Crushers' Assn. v. M., K. & T. Ry. Co.* 497 (498).

Appalachia, Stonega, and St. Charles, Va., coal districts. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (528).

Location of the several coal districts in Virginia, West Virginia, and Kentucky and their relative position with respect to market territory involved. *Id.* (546).

MARKET COMPETITION. *See* COMPETITION (MARKET).MARKETS. *See also* POINTS OFF LINE.

Memphis, said to be the greatest market for cotton seed in the United States. *Capital City Oil Co. v. Y. & M. V. R. R. Co.* 141.

Certain carriers refused to establish joint rates because they desire to reserve markets on their lines for mills on their lines; but the right of a carrier to so reserve or restrict markets on its own lines has repeatedly been denied by the Commission. *Eastern Oregon Lumber Producers' Assn. v. C., B. & Q. R. R. Co.* 316 (317, 318).

MEASURE OF RATES.

Where the Commission is considering a novel service only recently introduced, whose efficiency and permanence are in some degree problematical, the question of fixing a reasonable rate is attended with no little uncertainty, and immediate establishment of an appropriate and reasonable charge for the new service is possibly requiring more of carriers than in fairness could be exacted. *Arlington Heights Fruit Exchange v. S. P. Co.* 88 (93).

MEMPHIS, TENN.

While Memphis is an important gateway to the southwest, it is also an important originating and distributing center and is entitled to rates which are reasonable and nondiscriminatory. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (235).

MERGER.

Merger and dissolution of the Union Pacific and the Southern Pacific referred to. *Gile & Co. v. S. P. Co.* 193 (194, 195).

MILEAGE RATES.

Mileage scale of class rates from Memphis to southern Arkansas and Louisiana destinations, prescribed, and carriers expected to graduate their rates for intermediate distances in harmony therewith. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (244).

Reasonable commodity rates on rough rice from Arkansas points to Memphis prescribed. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (273).

Mileage rates between Ruston, La., and Arkansas points on the Rock Island, and between Ruston and points in Louisiana on the V., S. & P. should be readjusted in harmony with decisions in 39 I. C. C., 224, and 39 I. C. C., 256. *Thompson, Ritchie & Co. v. V., S. & P. Ry. Co.* 287 (295).

MILEAGE RATES—Continued.

Mileage scale of rates prescribed in original report, 36 I. C. C., 401, 412, modified to permit a relative adjustment of rates from mines in Illinois, Kentucky, and Alabama. The distance scale is intended for general application, and is used only because the large number of rates and routes involved make it impracticable to prescribe maximum rates to all intermediate points by any other method. Bituminous Coal to Mississippi Valley Territory, 378 (384, 385).

Rates on cottonseed oil in carloads from Oklahoma producing points to Kansas City, Mo., and on cottonseed cake, meal, and hulls to points in various States, prescribed. Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co. 497 (511).

MINIMUM WEIGHT.

Cement: Establishment of a maximum joint rate from Leeds, Ala., to Lafayette, La., required, and carriers may with propriety establish a carload minimum of 60,000 pounds to apply in connection therewith. Lafayette Chamber of Commerce v. A. & V. Ry. Co. 619 (621).

Hay: Increased minima for cars over 34 feet in length for hay shipped from Pecos Valley, N. M., to Texas and Louisiana, justified. A minimum of 17,500 pounds is a reasonable minimum for cars 34 feet or less in length. Hay Minimum Weights, 167 (170).

Stoves, gas: Minimum weight in excess of 20,000 pounds on carload shipments of gas stoves from Detroit, Mich., to Marshall, Tex., found unreasonable. Graduated minima are provided in the three principal classifications and it is not intended by this finding to express disapproval of the graduated minima scheme as a general proposition. Detroit Stove Works v. Wabash R. R. Co. 597 (598).

MISQUOTATION OF RATES:

Misquotation of a rate affords no basis for an award of reparation. Utah Wholesale Grocery Co. v. N. & W. Ry. Co. 345 (346).

MISROUTING:

Joint rates charged via route of movement were applicable over another route via which a lower combination was in effect, and contention that shipments were misrouted not sustained. Broderick & Bascom Rope Co. v. L. & N. R. R. Co. 213 (214).

Shipper applied for lowest available rate, was quoted a rail-and-water rate, and agreed to have shipment move by route over which this rate applied; but carrier's agent made out bill of lading omitting routing instructions but inserting charges, and shipment moved all rail at a higher rate. Held, misrouting, and reparation awarded. Keeton v. St. L. S. W. Ry. Co. 221.

Lumber shipped from Ore Hill, N. C., to New York, N. Y., was routed "Penn. Ry.," and moved by way of Potomac Yard at a higher rate than would have accrued had shipment moved through Pinners Point. No rate or junction point was shown in bill of lading, and under directions actually given the shipment was not misrouted. North State Lumber Co. v. S. Ry. Co. 409 (410).

Lumber from Hoffman, N. C., to McDonoughs, N. J., routed by shipper "care Raritan River Railway delivery," moved by way of Richmond. Same rate applied by way of Norfolk, and by that route exceeded the aggregate of intermediate rates; Held, shipment was not misrouted, and that rate charged is not proven unreasonable by the existence of a lower combination rate over another route. Clark Lumber Co. v. S. A. L. Ry. Co. 487 (488).

Potatoes from Masters, Colo., to Yuma, Ariz., held misrouted. In the absence of routing instructions it was the duty of the initial carrier to forward shipment over that reasonably available route by which lowest charges could be secured. Sanguinetti v. U. P. R. R. Co. 515.

MISROUTING—Continued.

Tobacco moved from Richmond, Ky., via Nicholasville, Ky., and Harriman Junction, Tenn., to Reidsville, N. C. The rate charged did not apply via this route, and unless shipments were misrouted, which can not be determined from facts of record, there is an outstanding undercharge. *Reynolds Tobacco Co. v. L. & N. R. R. Co.* 600 (607).

Lumber from Spring Hope, N. C., to Toronto, Ontario, not misrouted. The joint rate charged applied over all routes cited although a lower combination applied by way of one route which was not the route of movement. *Atlantic Lumber Co. v. A. C. L. R. R. Co.* 639.

Lumber from various points in South Carolina and Georgia to points in New Jersey and New York, routed by shippers by way of the Pennsylvania Railroad and forwarded by carriers through Potomac Yard, Va., not misrouted, although lower rates applied by way of Pinners Point. *Trexler Lumber Co. v. S. Ry. Co.* 753 (754).

Pine lumber from Blacksburg, S. C., to Jersey City, N. J., routed by shipper "P. R. R.," and forwarded through Potomac Yard, Va., instead of Pinners Point, not misrouted. If instructions given meant P. R. R. delivery, the shipper was careless in the use of words and defendants can not be held responsible. *Homer Lumber Co. v. S. Ry. Co.* 760.

MIXED CARLOADS.

Classification and tariffs in effect when shipment moved from Chicago Heights, Ill., to Daytona, Fla., show that a carload mixture of roofing tile and accessories was not permitted, and that rate charged on strips, nails, and roofing cement was not legally applicable. *Ludowici-Celadon Co. v. E. & E. Ry. Co.* 407 (408).

No provision made in western classification for a carload rating on mixed shipments of stone and marble, so that the carload rate and minimum applicable to one or the other of the commodities and the less-than-carload rate on the other should have applied. *Drake Marble & Tile Co. v. C. G. W. R. R. Co.* 422 (424).

Transit is not permitted at Ironton, Ohio, on mixed carloads of grain, grain products, and hay, and such shipments are subject to rule 10 of official classification and take the same rate and minimum as hay. *Goldcamp Mill Co. v. N. & W. Ry. Co.* 433 (439).

Rate on kraut brine in mixed carloads with kraut, or with kraut and pickles, found unreasonable to extent that it exceeded the rate on kraut, or kraut and pickles mixed in carloads. Reparation awarded. *Heinz Co. v. P. M. R. R. Co.* 622.

NET RATES.

Term refers to rates applied on inbound shipments when the manufactured product thereof is reshipped from milling points. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 303 (304).

NEW SERVICE. See MEASURE OF RATES.**NONCOMPENSATORY RATES. See CONFISCATORY RATES.****OCEAN AND RAIL.**

Rates between Atlantic seaboard territory, ocean and rail via Atlantic ports, and Ruston, La., and between Atlantic seaboard territory, by ocean and rail via Gulf ports, and Ruston, found unduly prejudicial to Ruston in favor of Shreveport and grouped points. *Thompson, Ritchie & Co. v. V., S. & P. Ry. Co.* 287 (290, 292).

OKLAHOMA CITY.

Has more short lines running in all directions than any other point in Oklahoma, and consequently the result of the application of the schedule from that point can not be considered typical of the state as a whole. *Oklahoma Cottonseed Crushers' Assn. v. M., K. & T. Ry. Co.* 497 (506).

OPERATING CONDITIONS.

Contention that operating conditions on lines of all carriers handling traffic from Cincinnati to Chattanooga, long and short lines alike, should be considered, invokes a sound general principle, but each case must stand upon its own merits. *Casey-Hedges Co. v. C., N. O. & T. P. Ry. Co.* 569 (570, 571).

OPINION TESTIMONY. *See* EVIDENCE.

ORDERS.

To award reparation between the date of service of order and its effective date would in substance be to disregard the statutory restriction and to require that rates prescribed go into effect before the statutory period. *Arlington Heights Fruit Exchange v. S. P. Co.* 88 (93).

Issuance of specific orders held in abeyance until opportunity has been had for further hearing and argument by any party feeling its interests prejudiced by findings herein. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (248); *Cities of Marshall and Jefferson, Tex., v. T. & P. Ry. Co.* 249 (255); *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (274).

A case in which an order is made may be reopened, and reheard after the effective period of the order has expired; and incidentally, the Commission may, on a rehearing, make just such an order giving effect to its views on rehearing as it may make on an original hearing. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (535).

Section 16a confers upon the Commission the power to fix the period during which its supplemental order shall be effective as well as conferring the power to draft supplemental orders in other particulars. *Id.* (535).

Circumstances may arise which would make it proper for Commission to withhold its order pending conclusion of court proceedings; but it is clearly under no requirement to do so. *Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co.* 703 (723).

OVERCHARGES.

Brick from Buffalo and Coffeyville, Kans., to Lincoln, Nebr., found to have been overcharged. Defendant expected promptly to refund overcharges, with interest at rate of 6 per cent. *Abel & Roberts v. M. P. Ry. Co.* 211.

Charges beyond Louisville on wheat from South Chicago, Ill., to Louisville, Ky., there milled and reshipped as products to points in Virginia, found, upon rehearing, to have been collected without legal tariff authority and the overcharges should be promptly refunded. *Templeton & Sons v. C., I. & S. R. R. Co.* 335.

Rates on less-than-carload shipments of women's untrimmed hats from points east of the Missouri River to San Francisco, Cal., found to have been in excess of rates legally applicable. Refund of any illegal charges should be made. *Jacob Co. v. A., T. & S. F. Ry. Co.* 411.

Finding in original report, unreported, that complainants had been overcharged on gas cooking stoves from various eastern points to San Francisco, Cal., and were entitled to reparation, reversed on rehearing, and reparation denied. *Boardman Co. v. A., T. & S. F. Ry. Co.* 445.

Mixed carloads of wrapping paper and paper bags from St. Louis, Mo., to Gallup, N. Mex., found to have been overcharged, and reparation awarded. Tariff provided that if the aggregate of intermediate rates makes less than through rates therein named, the combination rates so made will apply. *Crunden-Martin Mfg. Co. v. M. P. Ry. Co.* 631.

If overcharges exist, they should be promptly refunded with interest, without an order. *American Enameled Brick & Tile Co. v. R. R. R. R. Co.* 653 (657). Reparation awarded on account of. *Seidel Lumber Co. v. M. P. Ry. Co.* 670.

PACKING.

Requirements of carriers respecting sealing and strapping of fiber-board packages of cigarettes results in a burden upon the shipper which is not commensurate with benefits derived therefrom by the carriers; and cigarettes in standard fiber-board packages, meeting general classification requirements, with flaps securely glued and with seams covered by paper sealing strips, should be accepted and transported at not to exceed the first-class rate. *Reynolds Tobacco Co. v. A. & S. Ry. Co.* 371 (376-377).

Rate of three and one-half times first class on a spring delivery wagon with a fixed standing top, uncrated and without protection, from Chicago, Ill., to Seattle, Wash., not found illegal or unreasonable. *Bon Marche v. C., M. & St. P. Ry. Co.* 611.

PANAMA CANAL.

Prevailing rates upon principal commodities carried wholly by water via Panama Canal between Atlantic and Pacific ports of the United States, and by vessels not under United States registry from New York to Callao, Peru, and Valparaiso, Chile. Exhibit 4, Section (A). *Relations between Carriers by Rail and by Water*, 1 (73).

PAPER RATES.

A comparison of actual rates with paper rates affords a very insecure basis for a finding of undue or unlawful prejudice against complainants in favor of Memphis or northern Mississippi mills. *Capital City Oil Co. v. Y. & M. V. R. R. Co.* 141 (145, 146).

In justification of proposed cancellation of joint rates, carriers contended that they could not be used, and were mere paper rates to cancel which would affect no one. It appears that they may be used and are of benefit, and cancellation found not justified. *Lumber from Louisiana Points*, 688 (689).

PART UNLOADING.

Shipments of fresh meats and packing-house products were stopped at Montgomery, Ala., for partial unloading. No stoppage in transit arrangement was then in effect, and transit arrangements will not be applied retroactively except to remedy unjust discrimination. *Swift & Co. v. M. & O. R. R. Co.* 701.

Proposed cancellation of rules applicable in eastern trunk line territory which permit carload shipments of farm wagons to be stopped in transit for partial unloading, justified. *Stoppage in Transit of Farm Wagons*, 731.

PARTIES. See also DAMAGES.

In the absence of necessary parties no finding can be made respecting the rate charged on shipment which moved over their lines. *Broderick & Bascom Rope Co. v. I. & N. R. R. Co.* 213 (214).

It is no defense to say that rates from Henderson are controlled by lines which are parties defendant but which failed to appear at the hearing. *Henderson Cotton Mills v. I. & N. R. R. Co.* 399 (405).

The mere fact that it is possible to move traffic from Nashville to some if not all of the destinations in question over lines of carriers which are not named in complaint would not justify maintenance of unduly preferential rates by lines which are parties defendant. *Id.* (405, 406).

Certain shipments moved in part over rails of carriers not parties to record, and no order can be entered against these railroads in this proceeding; but they will be expected to participate in reparation awarded on shipments which moved over their rails. *Stearns & Culver Lumber Co. v. C., M. & St. P. Ry. Co.* 470 (472); *Minnesota & Ontario Power Co. v. C., St. P., M. & O. Ry. Co.* 481 (482).

PARTIES—Continued.

Consignor was agent of complainants and made shipments for their account. Complainants were in substance the true consignors and ultimately bore the freight charges, and the case, therefore, does not come within the rule which prohibits an award of reparation to a stranger to the transportation record. *Henderson v. M. L. & T. R. R. & S. S. Co.* 483 (484).

Misjoinder and nonjoinder: Where an unreasonable joint rate has been collected the liability of the parties to such action is joint and several, and reparation may be required of roads which participated in the traffic, even though other roads which participated are not made parties defendant. *Orgill Bros. & Co. v. N., C. & St. L. Ry.* 513 (514).

Owing to a change in management of complainant company no conclusive evidence could be produced as to who ultimately paid and bore freight charges. The paid expense bill by itself is insufficient, and reparation must be denied. *Forbes Mfg. Co. v. L. V. R. R. Co.* 566 (567).

Participating carriers not made parties defendant, and no finding can be made with respect to certain rates. *Major Stave Co. v. M., D. & G. R. R. Co.* 573 (578).

Nonjoinder: Shipments moved at joint rates to which defendants are parties, so that defendants are liable for any reparation that may be due even if proper parties defendant are not joined. *Heinz Co. v. P. M. R. R. Co.* 622 (624).

PARTS.

Rate legally applicable from Macon, Mo., to Marshalltown, Iowa, on vehicle parts was class A. Evidence as to composition of the shipment involved held insufficient to sustain complainant's contention that charges should have been assessed on basis of rates applicable to each of the several articles in the shipment. *Marshalltown Buggy Co. v. Wabash R. R. Co.* 633, 634.

PHYSICAL CONNECTION. See THROUGH ROUTES AND JOINT RATES.**PLEADINGS. See also ISSUE.**

Commission's Rules of Practice require that complaints shall conform to the more elementary requirements of pleading; that they shall be so sufficient, clear, and certain in their averments that the Commission may be informed of the issues and carriers fully advised of the nature and extent of the case they are called upon to defend. *Brooks Coal Co. v. Wabash R. R. Co.* 426 (428, 429).

Defendants objected at hearing to introduction of evidence relative to question of discrimination, on ground that discrimination was alleged too generally to apprise defendants of what discrimination they must defend. No violation of section 3 is alleged; and as complaint nowhere indicates in respect of what person or persons section 2 is contravened, the objection must be sustained. *Major Stave Co. v. M., D. & G. R. R. Co.* 573, 574.

POINTS OFF LINE.

Practice of the Santa Fe in so publishing its rates that lumber from Leesville, La., a point on the Kansas City Southern, may reach markets on its lines in Texas and Oklahoma only under a rate handicap of from 3 to 5½ cents has not been justified. *Nona Mills Co. v. K. C. S. Ry. Co.* 125 (130).

Carrier not required to shrink an admittedly low rate for the purpose of bringing to its rails coal from mines not served by it. *Black Mountain Corp. v. L. & N. R. R. Co.* 153 (160).

Each carrier that participates in joint rates is responsible for discriminations resulting therefrom, even if its lines do not extend to point preferred. *Henderson Cotton Mills v. L. & N. R. R. Co.* 399 (405).

The mere fact that the L. & N. refuses to extend to complainants' mines on the Cumberland Railroad its Pineville rate applying from mines on its own branch lines does not give to mines on branch lines of the L. & N. an undue preference, or subject complainants' mines to undue prejudice. *Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co.* 449 (452).

POINTS OFF LINE—Continued.

Proposed cancellation of joint rates from producing points on various lines to points on the Santa Fe system in Texas, found not justified. Lumber from Louisiana Points, 688.

POTENTIAL COMPETITION. *See* COMPETITION (POTENTIAL).

PRECOOLING.

Refrigeration rates found lawfully applicable on precooled shipments which moved prior to establishment of the precooling charge. Arlington Heights Fruit Exchange *v. S. P. Co.* 88 (93).

PREFERENCES AND PREJUDICES.

The mere fact that the L. & N. refuses to extend to complainants' mines on the Cumberland Railroad its Pineville rate applying from mines on its own branch lines does not give to mines on branch lines of the L. & N. an undue preference, or subject complainants' mines to undue prejudice. Brush Creek Mining & Mfg. Co. *v. L. & N. R. R. Co.* 449 (452).

Articles:

Lumber, pine and cypress: Maintenance of higher rates on, than on hardwood lumber from southeastern Arkansas to Memphis subjects the former description of traffic to undue prejudice. Memphis Freight Bureau *v. St. L., I. M. & S. Ry. Co.* 303 (306).

Localities:

Baton Rouge, La.: Undue prejudice and disadvantage alleged to exist against manufacturers of cottonseed products at Baton Rouge, La., in favor of Memphis and interior mills in northern Mississippi has not been proved. Capital City Oil Co. *v. Y. & M. V. R. R. Co.* 141 (146).

Black Mountain district: Rate on bituminous coal to Norfolk, Va., when for delivery to vessels destined to points outside the capes, should not exceed the rate from Norton, Va., by more than 20 cents per gross ton. Black Mountain Corp. *v. L. & N. R. R. Co.* 153 (161).

Bonnors Ferry, Idaho: Rates on lumber found unduly prejudicial to Bonners Ferry to extent that rates from Bonners Ferry exceed rates from Libby, Mont., by more than 2 cents and from Eureka, Mont., by more than 4.5 cents. Bonners Ferry Lumber Co. *v. G. N. Ry. Co.* 568.

Chattanooga, Tenn.: It appears that defendant does not control the rate to Nashville and therefore does not discriminate by the rate maintained on special iron articles from Cincinnati to Chattanooga. Casey-Hedges Co. *v. C., N. O. & T. P. Ry. Co.* 569 (572).

Concordia, Kans.: Rates on classes and certain commodities to Concordia found unreasonably prejudicial to Concordia in favor of Salina. Where rates to Concordia may reasonably be higher than to Salina maximum differentials are prescribed. Concordia Commercial Club *v. A., T. & S. F. Ry. Co.* 675.

Eastern Oregon points: Rates on lumber and articles taking lumber rates from, to various points found unduly prejudicial, and joint rates based on differentials over rates from Spokane, Wash., prescribed. Eastern Oregon Lumber Producers' Asso. *v. C., B. & Q. R. R. Co.* 316.

Gulf ports: Unlawful discrimination between import and domestic rates on brewers' rice from Gulf ports to interior points required to be removed in former proceeding. Mutual Rice Trade & Development Asso. *v. I. & G. N. Ry. Co.* 149 (152).

Helena, Ark.: Rates on whisky in glass, less than carloads, from various points to Helena not found unjustly discriminatory. Traffic from points involved does not move through Helena. Hemig-Ellis Drug Co. *v. L. & N. R. R. Co.* 459 (469).

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

- Henderson, Ky.: Rates on cotton piece goods to eastern points not found unjustly discriminatory against Henderson, as rates from competing points are made under circumstances and conditions which are substantially dissimilar from those existing at Henderson. *Henderson Cotton Mills v. L. & N. R. R. Co.* 399 (406).
- Keokuk, Iowa: Rate on pickles, catsup, and kraut to St. Louis, Mo., not found unduly prejudicial in favor of Hannibal, Mo., and Quincy, Ill., for the shorter distances from both points warrant some differences in rates. *National Pickle & Canning Co. v. C., B. & Q. R. R. Co.* 629 (630).
- Leesville, La.: Rates on yellow-pine lumber from Leesville, La., to points on lines of the Santa Fe system in Texas and Oklahoma that exceed rates from points on the Santa Fe system in the Oakdale, La., group to same points held unjustly discriminatory. *Nona Mills Co. v. K. C. S. Ry. Co.* 125 (130).
- Madisonville, Ohio: Higher rates to Madisonville than to Cincinnati, owing to the refusal of carriers to include Madisonville within the switching limits of Cincinnati, not found unreasonable or unduly prejudicial to complainants. *Settle & Co. v. A. G. S. R. R. Co.* 592 (595, 596).
- Marshall and Jefferson, Tex.: Class and commodity rates to, from territories and points of origin north and east thereof, found unreasonable and unduly prejudicial in favor of Texarkana and Shreveport. *Cities of Marshall and Jefferson, Tex. v. T. & P. Ry. Co.* 249 (253).
- Memphis, Tenn.: When the percentage relationship of distances and corresponding first-class differentials St. Louis under Memphis from various points are compared with percentage relationships of distances from Memphis and St. Louis to southern Arkansas and Louisiana, and for which a differential of only 10 cents is maintained, unjust discrimination against Memphis and undue preference in favor of St. Louis becomes apparent. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (236).
- Memphis, Tenn.: Rates from St. Louis and East St. Louis to southern and southeastern Missouri are depressed by water competition on the Mississippi River, and are not unduly discriminatory against Memphis, although lower for equal distances. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (269).
- Memphis, Tenn.: Distances from St. Louis and East St. Louis to points in northern Arkansas are greater than from Memphis, and rates are unduly prejudicial to Memphis. *Id.* (269).
- Memphis, Tenn.: Cotton rates from Arkansas points to Memphis are unduly prejudicial in so far as they exceed rates made on a differential of 10 cents under rates to St. Louis and East St. Louis. *Id.* (271).
- Memphis, Tenn.: Rates on lumber between points in Arkansas as compared with rates from Arkansas points to Memphis subject Memphis to undue prejudice and disadvantage. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 303 (311).
- Memphis, Tenn.: Rates on whisky in glass and in wood and on beer not found unjustly discriminatory against Memphis in favor of New Orleans. *Hessig-Ellis Drug Co. v. L. & N. R. R. Co.* 459.
- Milwaukee, Wis.: Carriers do not discriminate unduly against Milwaukee by refusing to apply same rates to Milwaukee as they apply to Chicago on coal moving all rail to both points. *City of Milwaukee v. C., M. & St. P. Ry. Co.* 363 (365).

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Milwaukee, Wis.: It is not shown that the across-lake rate on anthracite coal for local delivery at Milwaukee, higher than the proportional across-lake rate on traffic destined for beyond, discriminates unduly against Milwaukee. *Id.* (366).

Norman, N. C.: On rehearing, rates on lumber from Norman to points north and east of Virginia cities found unduly prejudicial as compared with rates from other branch-line points in same general vicinity. No proof of damage. *Snow Lumber Co. v. R., C. & S. Ry. Co.* 456.

Oklahoma points: Previous conclusion that rates and grouping on both cottonseed oil and cake, meal and hulls, are unjust, unreasonable, and unjustly discriminatory against Oklahoma points, adhered to. *Oklahoma Cottonseed Crushers' Assn. v. M., K. & T. Ry. Co.* 497 (503).

Perth Amboy, N. J.: Rate adjustment on iron and steel articles between Perth Amboy, N. J., and New England points, gives to complainant's competitors an undue and unreasonable preference and advantage to the prejudice and disadvantage of complainant at Perth Amboy. *Pardee Works v. C. R. R. Co. of N. J.* 162.

Ruston, La.: Rates between various buying and selling markets and Ruston, La., found unduly prejudicial against Ruston in favor of Shreveport and grouped points. *Thompson, Ritchie & Co. v. V., S. & P. Ry. Co.* 287 (289-292).

St. Joseph, Mo.: Rates on fresh meat, packing-house products, and green salted hides from St. Joseph, Mo., to St. Louis and Chicago, respectively, for local delivery and for beyond, not found unduly prejudicial. *South St. Joseph Live Stock Exchange v. A., T. & S. F. Ry. Co.* 417.

St. Paul: Rate assailed on marble rated sixth class in official classification held not unreasonable or unjustly discriminatory against complainant at St. Paul. *Drake Marble & Tile Co. v. N. Y., O. & W. Ry. Co.* 392 (396).

Shreveport, La.: Class rates applying between Shreveport and designated stations in Oklahoma and Arkansas found unduly prejudicial to Shreveport in favor of Texas points. *Shreveport Chamber of Commerce v. K. C. S. Ry. Co.* 296 (302).

Sioux City, Iowa: Maintenance of higher interstate express rates between Sioux City and points in South Dakota than between points in the same State, under substantially similar circumstances and conditions, constitutes undue prejudice and unjust discrimination against Sioux City. *Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co.* 703, 724.

South River, N. J.: Rates on enameled brick from South River not shown to be unjustly discriminatory in comparison with rates from Mount Savage, Md. *American Enameled Brick & Tile Co. v. R. R. R. R. Co.* 653 (656).

West Salem, Wis.: Rate on canned peas from West Salem to St. Paul and Minneapolis found unjustly discriminatory in comparison with lower rates to St. Paul from La Crosse, Bangor, and Sparta, Wis. *West Salem Canning Co. v. C. & N. W. Ry. Co.* 341.

Persons:

When carriers undertake to lay aside transportation conditions and to create a rate relationship based largely on commercial factors, they must do it consistently so as to avoid artificial and undue advantages for some shippers to the prejudice and disadvantage of others. *Pardee Works v. C. R. R. Co. of N. J.* 162 (165).

PREFERENCES AND PREJUDICES—Continued.

Persons—Continued.

Memphis shippers being excluded from Arkansas on account of state-made rates, Arkansas shippers and merchants are unduly preferred, while the Arkansas consumer is cut off from the competing Memphis market. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (263).

Failure of defendant to pay a furnace allowance to complainants, when such allowances were paid to complainant's competitors, subjected complainants to unlawful prejudice and disadvantage. *Pittsburgh Steel Co. v. P. & L. E. R. R. Co.* 312 (315).

A charge for the movement of a car from the point where it may be at the time to point where it is wanted unjustly discriminates against shippers at stations to which empty cars must usually be hauled for varying distances and unduly prefers shippers at points where empty cars are always available. *City Ice Delivery Co. v. P. M. R. R. Co.* 589 (591).

PROFITS.

Mere diminution or loss of prospective trade profits does not alone afford a basis for reparation under the act. *Brooks Coal Co. v. Wabash R. R. Co.* 426 (432).

There is no showing that complainant had to shrink its profits on all or any particular portion or portions of its product in order to effect sales in competition with manufacturers at St. Louis. Damage for which reparation can be awarded in discrimination cases is not shown to have been sustained. *Wilkes & Co. v. A. G. S. R. R. Co.* 447 (448).

A carrier can not claim the right to earn a net profit from every mile, section or other part into which its road may be divided. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (542).

PROHIBITIVE RATES.

Combination rates on soft coal from Oak Hills, Colo., to various destinations are practically prohibitive. *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 94 (98).

Rate on salt from Kansas mines to Texas points was more than 400 per cent of the selling price of salt at point of origin, and no shipments were made during the year 1914. *Swift & Co. v. U. P. R. R. Co.* 665 (667).

PROPORTIONAL RATES. See ACROSS-LAKE RATES; LOCAL RATES.

RAIL-AND-WATER.

Shipper quoted a rail-and-water rate, but carrier's agent made out bill of lading omitting routing instructions but inserting charges, and shipment moved all rail at a higher rate. Reparation awarded on account of misrouting. *Keeton v. St. L. S. W. Ry. Co.* 221.

RATE COMPARISONS.

Rates on brick, Mechanicville and Lansingburgh, N. Y., and Gonic, N. H., to Boston, Mass., contrasted with intrastate distance rates in Tennessee and Georgia. Such comparisons are of little value when it is not shown that circumstances and conditions are substantially similar. *Duffney Brick Co. v. B. & M. R. R.* 118 (121, 122).

In making rate comparisons, differences in operating conditions and traffic density in respective territories in which rates apply should be considered. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (231).

Tables of class rate comparisons basing on class scales of various defendant carriers operating in Arkansas; and rates on selected commodities from Memphis to Arkansas destinations, and rates for comparable distances, interstate or intrastate, in Nebraska, Minnesota, Mississippi, and Arkansas. *Appendix. City of Memphis v. C., R. I. & P. Ry. Co.* 256 (275, 283).

RATE COMPARISONS—Continued.

Rate comparisons can not be regarded as controlling where rates alleged to be unreasonable were made effective with little or no regard to question of whether they yielded adequate compensation. *Pillsbury Flour Mills Co. v. G. N. Ry. Co.* 353 (358).

Comparisons of rates in same territory which have been passed on and found reasonable must be given precedence over any comparative statements of rates between points in other sections of the country. *Bituminous Coal to Mississippi Valley Territory*, 378 (383).

Rates attacked earn more per ton-mile than rates cited in comparison, but no evidence was furnished that transportation conditions are substantially similar or that volume of traffic is relatively the same. Ordinarily rate adjustments can not be condemned upon such evidence. *Major Stave Co. v. M., D. & G. R. R. Co.* 573 (575).

REASONABLE TIME. *See* LIMITATION OF ACTION; RECONSIGNMENT.

RECONSIGNMENT.

Reconsigning and back-haul charges on coal from Hickory Canon, Colo., to Gould, Okla., found unlawful. Complainants requested diversion to Liberal, Kans., but shipment passed Dalhart, Tex., before diversion order was received. It was back hauled from Amarillo to Channing, Tex., intercepted there and forwarded to Gould, the original billed destination; and the situation is not essentially different from what it would have been if no action whatever had been taken on complainants' request. *Colorado Fuel Co. v. M., K. & T. Ry. Co. of Tex.* 491-493.

A "reasonable time" within which consignee should have given orders for reconsignment so as to have avoided the charge for reconsignment extends from the day on which passing notice was mailed until noon of the second day thereafter. *Becker v. P. M. R. R. Co.* 739 (741).

Charges upon cars detained during period of controversy should be refunded if reconsignment orders were given before arrival of cars at Milwaukee or within the time found reasonable for such orders. *Id.* 742).

Charges at Ludington during period named should be refunded if carrier failed to furnish passing notice at Toledo, or if reconsignment orders were given within the "reasonable time," or prior to the arrival of the car. *Id.* (742).

As to charges claimed as set-off in favor of defendant, it is enough to say that there was no authority for waiver of lawful charges during the period named and charges should be assessed, therefore, on basis of the reasonable time prescribed. *Id.* (743).

RECORD.

Commission may consider and, in support of its conclusions, may rely upon actual facts and figures pertaining to matters referred to in the record, as verified by tariffs and other official documents and records which the law requires carriers to file with it. *Oklahoma Cottonseed Crushers' Assn. v. M., K. & T. Ry. Co.* 497 (501).

Exhibits compiled by Commission's examiners, offered in evidence at a duly appointed hearing, without objection, properly identified by the official stenographer and filed along with all other evidence in the case, are lawfully a part of the record. *Stonegate Coke & Coal Co. v. L. & N. R. R. Co.* 523 (539).

REDUCTION IN RATES.

Third-class rate on less-than-carload shipments of cotton denims from Canton, Ga., to Knoxville, Tenn., found unreasonable to extent that it exceeded a commodity rate. Reparation awarded. *Knoxville Overall Co. v. L. & N. R. R. Co.* 330.

No attempt was made to justify either the increased rate on salt from Kansas mines to Texas points or the preceding rate and a reasonable maximum rate is prescribed. *Swift & Co. v. U. P. R. R. Co.* 665 (669).

REFRIGERATION.

Collection of refrigeration rates on precooled shipments which moved prior to establishment of the precooling charge not found unlawful. *Arlington Heights Fruit Exchange v. S. P. Co.* 88 (93).

REFRIGERATOR CARS.

An additional charge may be just and reasonable when refrigerator cars are used for transportation of ice, but it should be added to the transportation rate on the commodity and not imposed as a mileage charge for movement of the empty car. *City Ice Delivery Co. v. P. M. R. R. Co.* 589 (591).

REHEARING. *See also* **ORDERS.**

Reparation denied on precooled and pre-iced oranges transported from California points to interstate destinations and Canada. *Arlington Heights Fruit Exchange v. S. P. Co.* 88.

The Commission may, on a rehearing, make just such an order giving effect to its views on rehearing as it may make on an original hearing. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (535).

Case was reopened on respondent's motion and it can not be heard to complain of something it initiated and requested. *Id.* (535).

Original order modified. *Bonniers Ferry Lumber Co. v. G. N. Ry. Co.* 568.

RELATIVE ADJUSTMENT. *See also* **DIFFERENTIALS.**

It appears that rates from the Virginia cities and the Carolinas to the Shreveport group bear a fixed relationship to rates from Atlantic Seaboard territory. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (247).

Rates on canned peas from Onalaska, Wis., to St. Paul may not be considered as differing materially from the adjustment of rates from La Crosse. *West Salem Canning Co. v. C. & N. W. Ry. Co.* 341 (343).

Where so many inconsistencies and discriminations have existed, there must necessarily in a readjustment be changes in both directions, upward as well as downward. Original report, 36 I. C. C., 401, modified to permit establishment of relative rates from mines in Illinois, Kentucky, and Alabama. *Bituminous Coal to Mississippi Valley Territory*, 378 (383, 384).

If places A and B are competing in or for same markets, the fact that carrier serving them both has elected to make its rates to or from A with regard or relation to rates to or from another place, and its rates to or from B with regard or relation to rates to or from still another place, can not be accepted as justification for depriving either A or B of the benefits of its natural location or for unjust discrimination against either A or B. *Goldcamp Mill Co. v. N. & W. Ry. Co.* 433 (444).

Record does not afford a sufficient basis for determining the differential between rates from Kansas mines to Oklahoma City and to Fort Worth. *Swift & Co. v. U. P. R. R. Co.* 665 (669).

RELATIVE RATES. *See also* **RATE COMPARISONS.**

The Black Mountain district is entitled to an outlet for its coal by way of the Louisville & Nashville at a rate that will be in fair harmony with rates published by that road from other mines equally distant from Atlanta, Ga., and with rates published by the Southern Ry. *Black Mountain Corp. v. L. & N. R. R. Co.* 15. (157, 158).

Concordia, Kans.: Circumstances and conditions surrounding transportation from the Mississippi River and points east thereof to Concordia are substantially dissimilar from those surrounding transportation to other points named and do not justify as low rates; but distances to Concordia and Salina are about equal and conditions which affect rates to both points are substantially the same. *Concordia Commercial Club v. A., T. & S. F. Ry. Co.* 675 (684).

RELATIVE RATES—Continued.

Gallup, N. Mex.: Rates on wrapping paper and paper bags from St. Louis not found unreasonable as compared with rates to El Paso from St. Louis. *Crun-den-Martin Mfg. Co. v. M. P. Ry. Co.* 631 (632).

Henderson, Ky.: Rates on cotton piece goods to points east held not unreasonable. Rates from Nashville and other competing points are made under circumstances and conditions which are substantially dissimilar from those existing at Henderson. *Henderson Cotton Mills v. L. & N. R. R. Co.* 399 (406).

Ironton, Ohio: Rates on grain, grain products, and hay from, to West Virginia points found unreasonable in comparison with rates from Columbus and Cincinnati. *Goldcamp Mill Co. v. N. & W. Ry. Co.* 433 (444).

Monroe, Alexandria, and Shreveport, La., are usually given same basis of rates from Atlantic seaboard ports. Rate on loaded shells and metallic cartridges from Bridgeport, Conn., to Monroe, should not have exceeded the rate to Shreveport. Reparation awarded. *Monroe Grocer Co. v. N. Y., N. H. & H. R. R. Co.* 561 (562).

St. Joseph, Mo.: Rates on fresh meat and packing-house products to St. Louis and Chicago, respectively, which exceed rates maintained by certain roads from Kansas City, not found unreasonable. *South St. Joseph Live Stock Exchange v. A., T. & S. F. Ry. Co.* 417.

Shreveport, La.: There is no such dissimilarity in circumstances and conditions affecting traffic between Shreveport and Oklahoma stations, as compared with those surrounding traffic between Texas points and same destinations, as would warrant the application of different scales of rates. *Shreveport Chamber of Commerce v. K. C. S. Ry. Co.* 296 (300).

Sulphur Mines, La.: Rates on sulphur from Sulphur Mines to points in Wisconsin and upper peninsula of Michigan not found unreasonable in comparison with rates from Atlantic ports which are applicable through a territory where substantially lower rates are in effect than in territory through which sulphur moves all rail. *Pulp & Paper Mfrs. Traffic Asso. v. Belt Ry. Co.* 360 (362).

Tennessee: Rates on marble from Tennessee to Kansas City and St. Paul, adjusted with relation to competition that Tennessee marble encounters in comparison with marble from Vermont, Massachusetts, Georgia, and other points, not found unreasonable. *Drake Marble & Tile Co. v. N. Y., O. & W. Ry. Co.* 392 (398).

RELEASED RATES.

Defendant formerly maintained four rates on ores depending on their value. These have been consolidated into one rate and one valuation. But such a consolidation is lawful only where it does not result in the imposition of unreasonable and discriminatory rates. *Wellington Mines Co. v. C. & S. Ry. Co.* 202 (207).

Increased rate on ore and concentrates of a gross value not exceeding \$12 per ton and so released, not justified. Reasonable rate prescribed. *Id.* (207).

Charges on two carloads of blackstrap molasses delivered to the initial carrier without declaration of value in bills of lading found unreasonable and reparation awarded. *Henderson v. M. L. & T. R. R. & S. S. Co.* 483 (484).

RES ADJUDICATA.

Before the reopening of I. & S. dockets 71 and 321 contention of L. & N. that it should have as its division its full local from Appalachia was necessarily *res adjudicata*. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (534).

RESHIPPING RATES.

Omaha Grain Exchange v. C. & A. R. R., 32 I. C. C., 597, in which Commission prescribed maximum reshipping rates on wheat and corn and articles taking same rates from Omaha, followed, and reparation awarded on coarse grain and alfalfa feed from Omaha to certain Missouri points. *Merriam & Millard Co. v. C. & A. R. R. Co.* 485.

RETROACTIVE.

Original decision denying retroactive application of dressing-in-transit arrangements at Columbus, Miss., and Reform, Ala., there being no proof of undue discrimination, affirmed on rehearing. *Meeds Lumber Co. v. A. C. Ry.* 337.

A transit provision which, through error or misunderstanding, is withdrawn or becomes inoperative for a short period and is subsequently restored and continued in effect can not be regarded in the same light as a newly established arrangement and does not come within rule against awards of reparation that are tantamount to retroactive application of such provisions. *Williams Stave Co. v. La. Ry. & N. Co.* 553 (554-555).

No stoppage in transit arrangement in effect at Montgomery, Ala., at time shipments moved, and transit arrangements will not be applied retroactively except to remedy unjust discrimination. *Swift & Co. v. M. & O. R. R. Co.* 701, 702.

RETURNED SHIPMENT.

Rate charged for return transportation of spokes in the white from New Orleans, La., to Jackson, Tenn., admittedly unreasonable to extent that it exceeded the rate in the opposite direction. Reparation awarded. *Memphis Freight Bureau v. I. C. R. R. Co.* 641.

ROUTES.

Joint rates charged, which were applicable over two routes, found unreasonable to extent that they exceeded aggregates of intermediates, applicable over route which was not the route of movement, which would have applied over route of movement in the absence of joint rates. *Broderick & Bascom Rope Co. v. L. & N. R. R. Co.* 213 (214).

Rates asked were available by other routes than route which shipper directed, including routes in which defendant participated, and apparently were subsequently published over route of movement solely for competitive reasons. Rates charged can not be found unreasonable upon this evidence. *Riegel Sack Co. v. C. R. R. Co. of N. J.* 222 (223).

Two alternative routes are open to shippers of fish from Provincetown to Harlem River by which lower rates apply than proposed rate by way of Boston. The Boston route is longer, and in view of the special and expedited service provided, the proposed rate does not appear to be unreasonable. *Fish to New York, N. Y.* 333 (334).

Neither the application of a lower rate over another route nor the former application of a lower rate over route of movement of itself affords any basis for holding that rate charged was unreasonable. *Utah Wholesale Grocery Co. v. N. & W. Ry. Co.* 345 (346).

Pine lumber from St. Louis, Mo., to Dundee, Ill., was specifically routed by shipper over route taking a combination rate. A lower joint rate was applicable over four other routes; but the existence of a lower rate over other routes and the subsequent establishment of same over route of movement do not warrant the condemnation of the rate charged. *Seidel Lumber Co. v. M. P. Ry. Co.* 670.

A joint rate was applicable on box shooks from Vicksburg, Miss., to Fort Arthur, Tex., by way of two available routes. Former findings that the rate via Baton Rouge was not unreasonable but that the rate via Delta Point was unreasonable in that it exceeded the aggregate of intermediate rates, affirmed on rehearing. *Anderson-Tully Co. v. A. & V. Ry. Co.* 734.

ROUTING INSTRUCTIONS. See also ROUTES; MISROUTING.

Shipper intended to consign shipment to Greenville, S. C., but inadvertently consigned it to Greensboro, N. C., at which point demurrage accrued. It was then reconsigned to Greenville, S. C. Service performed was consistent with complainant's instructions and charges based on legal tariff rates held not unreasonable. *Pocahontas Coke Co. v. N. & W. Ry. Co.* 218, 219.

SCRAP IRON. *See* **SECONDHAND.****SECONDHAND.**

Rate on secondhand sawmill machinery from Stevenson, La., to DeQueen, Ark., not found unreasonable. State rates afford standards of comparison, but are not controlling. *Beekman Sawmill Co. v. St. L., I. M. & S. Ry. Co.* 215 (216). When secondhand articles are carefully loaded and braced in a car, it may be assumed, in the absence of a showing to the contrary, that they are so loaded to prevent breakage in transit. Contention that brick trucks, knocked down, consisted of scrap iron on which a lower rate applied, not sustained. *Bibb Brick Co. v. C. of G. Ry. Co.* 625 (626).

SECTION 1.

Duty of carriers to furnish cars upon reasonable request therefor does not carry with it a right to charge for the movement of the car from point where it may be at the time to point where it is wanted. *City Ice Delivery Co. v. P. M. R. R. Co.* 589 (591).

SECTION 2.

Complaint nowhere indicated in respect of what person or persons section 2 was contravened. *Major Stave Co. v. M., D. & G. R. R. Co.* 573 (574).

SECTION 3. *See also* **DISCRIMINATION; PREFERENCES AND PREJUDICES.**

Violation of, not specifically alleged in complaint, but issue raised upon hearing, and carriers made no objection. *Brooks Coal Co. v. Wabash R. R. Co.* 426 (428). No violation of, alleged. Defendants not apprised of what discrimination they must defend. *Major Stave Co. v. M., D. & G. R. R. Co.* 573 (574).

SECTION 4. *See also* **LONG AND SHORT HAUL; THROUGH AND LOCAL.**

Difficulty of complying with the law because of lack of uniformity in the three classifications can not be accepted as an excuse for existing violations. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (238).

Proposed increased rates are not reasonable merely because they rectify fourth section departures. *Coal to Cleburne, Tex.*, 617 (618).

SECTION 15.

Commission's order for reduction of rates can not take effect until after a reasonable time, which shall in no instance be less than 30 days after service of the order. *Arlington Heights Fruit Exchange v. S. P. Co.* 88 (93).

Short haul provision. *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 94 (104, 111).

Allowances. *Lehigh Valley Coal Sales Co. v. L. V. R. R. Co.* 339 (340).

SECTION 16a.

It can not be said that this section contemplates necessarily that the rehearing and reconsideration of a case in which an order is made must be completed before that order expires. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (535).

SENATE RESOLUTION.

Report to the Senate in response to Senate resolution No. 364. *Relations between Carriers by Rail and by Water*, 1.

SET-OFF.

As to charges claimed as set-off in favor of defendant, there was no authority for waiver of lawful charges. *Becker v. P. R. R. Co.*, 739 (743).

SHORT HAUL.

Short haul paragraph of section 15 precludes establishment of through routes and joint rates in certain instances. *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 94 (100, 104, 112).

STATE RATES. *See also* **INFUNCTION.**

Rate on second-hand sawmill machinery from Stevenson, La., to DeQueen, Ark., not found unreasonable. State rates afford standards of comparison, but are not controlling. *Beekman Sawmill Co. v. St. L., I. M. & S. Ry. Co.* 215 (216).

STATE RATES—Continued.

Maintenance of class and commodity rates between points in Arkansas lower by more than a reasonable bridge toll across the Mississippi River than interstate class and commodity rates for similar distances between Memphis and Arkansas points results in a relationship between state and interstate rates which is unduly prejudicial to Memphis and constitutes a burden upon interstate commerce. Interstate rates, with the few exceptions noted, held reasonable as a whole. *City of Memphis v. C., R. I. & P. Ry. Co.* 256 (263, 265, 267).

Arkansas state rates on rough rice discriminate unduly against Memphis. *Id.* (273).

Preferential treatment accorded to shippers of lumber between points in Arkansas not justified by saying that rates were forced upon defendants by state authority. Undue or unreasonable prejudice or disadvantage to interstate shippers is none the less unlawful because it results from observance of state-prescribed rates. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 303 (311).

Exercise of an optional privilege, if such were extended by state commission's report and order, of increasing intrastate rates from Saginaw Valley points instead of reducing those from Cadillac, to southwestern Michigan, can not be held to discharge the burden of proof resting upon respondents to show that increased interstate rates are just and reasonable. *Lumber from Michigan Points*, 367 (369, 370).

Finding that rates on turpentine stills and fixtures, turpentine in tanks, turpentine cups, and dip barrels from Paxton, Fla., through Alabama to Milton, Fla., and on railroad material from Paxton through Alabama to Laurel Hill, Fla., were not unreasonable, affirmed on rehearing. Florida intrastate rates are said not to afford a fair basis of comparison. *Bagdad Land & Lumber Co. v. L. & N. R. R. Co.* 473.

For state-made rates to be within the requirements of the fourteenth amendment they must not be confiscatory. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (541).

Complaint alleging that charges on kainit from Fernandina, Fla., to points within the same state were illegal in that rates on interstate or foreign shipments were applied instead of Florida intrastate rates, which were lower, dismissed for want of proof. It is well settled that the character of traffic, whether state or interstate, must be determined largely by facts of each case. *Virginia-Carolina Chemical Co. v. S. A. L. Ry.* 660.

The large differences between interstate and intrastate express rates for equal distances place a burden upon interstate shippers and give a corresponding advantage to intrastate shippers, thus accomplishing an inevitable restriction of shipments in interstate commerce or shrinkage of profits. *Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co.* 703 (719).

If the United States court should hold that South Dakota express rates are not confiscatory it would still be the duty of this Commission to require the removal of an unjust discrimination against interstate commerce. *Id.* (722).

STOPPAGE IN TRANSIT. *See also* RETROACTIVE; TRANSIT PRIVILEGES.

Proposed cancellation of rules applicable in eastern trunk line territory which permit carload shipments of farm wagons to be stopped in transit for partial unloading justified. *Stoppage in Transit of Farm Wagons*, 731.

SUBSEQUENTLY ESTABLISHED RATES. *See also* VOLUNTARY REDUCTION.

Rates apparently were subsequently published over route of movement solely for competitive reasons, and rates charged not found unreasonable. *Riegel Sack Co. v. C. R. R. Co. of N. J.* 222 (223).

Subsequent reduction of a rate is insufficient to prove former rate unreasonable. *American Refining Co. v. T. & P. Ry. Co.* 559 (560).

SUCCESSORS.

Successor in interest to complainant held entitled to reparation. *Stearns & Culver Lumber Co. v. C., M. & St. P. Ry. Co.* 470 (472).

SUPPLEMENTAL ORDERS. *See* ORDERS.

SUSPENDED RATES.

Original hearing involved increases in rates which were not justified and existing rates were ordered to be kept in effect for a two-year period. At the expiration of such period the formerly proposed increases do not go into effect automatically, but the increased rates must be lawfully published, and same would then be subject to suspension again. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (535).

SWITCHING.

Switching charges in excess of line-haul charges on brick from Attica, Ind., to Harvey, Ill., found unlawful. The limitation as to absorptions contained in the Wabash tariff can not be held to have affected the rate to be paid by shipper or consignee as specified in that tariff in connection with the Lowrey tariff to which it referred. *Lucke & Co. v. Wabash R. R. Co.* 517, 519.

Higher rates to Madisonville, Ohio, than to Cincinnati, owing to the fact that Madisonville is not included within the switching limits of Cincinnati, not found unreasonable or unduly prejudicial to complainants. *Settle & Co. v. A. G. S. R. R. Co.* 592 (595).

SYSTEM.

The Illinois Central and Yazoo & Mississippi Valley railroads can not be considered as distinct operating entities in making of rates on cottonseed traffic. *Capital City Oil Co. v. Y. & M. V. R. R. Co.* 141 (146).

Principal justification of an increased rate was that the narrow-gauge division over which such rate applied had been operated at a loss. There is no showing that a reduction in the rate will result in loss to defendant, considering its system as a whole. *Wellington Mines Co. v. C. & S. Ry. Co.* 202 (204, 206).

The Texarkana & Fort Smith Railway, extending from Shreveport to the Texas-Arkansas state boundary, forms a part of the Kansas City Southern system and is under same management and control. Conditions are therefore absent which would justify increased rates on account of the "joint rate" haul between Shreveport and Ashdown. *Shreveport Chamber of Commerce v. K. C. S. Ry. Co.* 296 (301).

The Louisville & Nashville owns a controlling interest in the Louisville, Henderson & St. Louis and in the Nashville, Chattanooga & St. Louis, and its contention that rates from Nashville are controlled by the latter line is not convincing. *Henderson Cotton Mills v. L. & N. R. R. Co.* 399 (405).

Competitive influences from Memphis to St. Louis can not be accepted as justifying the same line in carrying higher rates from its equidistant Oklahoma points than from Memphis to Kansas City. *Oklahoma Cottonseed Crushers' Assn. v. M., K. & T. Ry. Co.* 497 (502).

Maximum rates on cottonseed oil from Oklahoma producing points to Kansas City, prescribed. Two cents may be added to rates on shipments transported over two or more lines not under same management or control. *Id.* (511).

A carrier can not claim the right to earn a net profit from every mile, section, or other part into which its road may be divided. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (542).

TABLES. *See* RATE COMPARISONS.

TANK CARS.

It is not shown that acid of greater purity or higher value is not or can not be shipped in tank cars or that only acid of better grades and greater value is shipped in drums; and rate on sulphuric acid between Grasselli, Ala., and Morgantown, N. C., should not exceed the rate on like traffic in tank cars. *Kistler, Lesh & Co. v. A. G. S. R. R. Co.* 478 (490).

TANK CARS—Continued.

The fact that the average daily movement of cottonseed-oil tank cars is greater than that of box cars does not necessarily prove that the tank cars are given an expedited service. *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co.* 497 (508).

Rate on glucose in tank cars from Keokuk, Iowa, to Portland, Oreg., and north Pacific coast points found reasonable although it exceeds the rate on glucose when shipped in barrels and handled in box cars. There is no return loading for tank-car equipment. Reparation awarded for payment of a rate in excess of 80 cents. *Hubinger Bros. Co. v. A., T. & S. F. Ry. Co.* 672.

TARIFFS. See also ERROR.

Tariff held unreasonable in failing to provide for application of a commodity rate named therein to machinery set up on skids. Omission unintentional. Reparation awarded. *Gisholt Machine Co. v. C. & N. W. Ry. Co.* 147 (148).

Nonconformity of tariff, which canceled absorption of storage charges at Stockton, Cal., to Commission's rules may have rendered carrier publishing it liable for penalties prescribed by the act for violations of rules, but in absence of proof of damage to shipper, does not afford a basis for an award of reparation. *Ennis, Brown Co. v. A., T. & S. F. Ry. Co.* 209 (210).

Tariffs are to be interpreted according to reasonable construction of the language; the intention of the framers and practices of carriers do not control when they are at variance with the proper construction of terms employed in the tariff. *Lucke & Co. v. Wabash R. R. Co.* 517 (518).

Limitation as to absorptions contained in Wabash tariff can not be held to have affected the rate to be paid by shipper or consignee as specified in that tariff in connection with the Lowrey tariff to which it referred. *Id.* (519).

It is practically impossible to distinguish bridge plates from boiler plates, or bar iron and steel from plow steel; but different rates are being charged. Defendant should remove from its tariffs the ambiguities by stating rates specifically enough to avoid any possible discrimination. *Casey-Hedges Co. v. C., N. O. & T. P. Ry. Co.* 569 (572).

The meaning of a tariff is to be gathered from a reasonable construction of the terms employed in it and is not affected by the unexpressed intentions of its framers. *Woolson Spice Co. v. P. Co.* 583 (584).

The framers of tariff containing mileage scale on "sand and loam soil" apparently did not intend it to apply on shipments of sand in straight carloads, but intention alone is not controlling. *Slane Glass Co. v. V. & S. W. Ry. Co.* 586 (587).

The fact that no symbol or italics appeared in tariff item or supplement indicating a reduction in rates, as required by rule 2 (a) of Tariff Circular 18-A, is not conclusive that no change was made; but it at least put shippers on inquiry as to the meaning of item here involved. *Swanson v. T. & P. Ry. Co.* 725 (730).

TERMINAL SERVICE.

Terminal services performed at Portland on less-than-carload transcontinental shipments to Willamette Valley points through Portland are greater than in connection with a local shipment from Portland. *Gile & Co. v. S. P. Co.* 193 (196).

TESTIMONY. See EVIDENCE.**THEFT. See CONCEALED LOSS.****THREE-LINE HAUL.**

That three-line haul is involved rather than a two-line haul held immaterial, and through routes and joint rates prescribed. *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 94 (106, 114).

THROUGH AND LOCAL.

Joint rates charged, which were applicable over two routes, found unreasonable to extent that they exceeded aggregates of intermediates, applicable over route which was not the route of movement, which would have applied over route of movement in the absence of joint rates. *Broderick & Bascom Rope Co. v. L. & N. R. R. Co.* 213 (214).

The fourth section is obviously violated whenever a combination of rates governed by like rules and regulations is lower than the through rate, and may also be violated in cases where the regulations or commodity descriptions in two classifications vary. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (240).

Instances in which through class rates exceed aggregates of intermediate rates subject to the act not justified. Revised commodity rates must not exceed the aggregate of intermediate rates. *Id.* (242, 247).

Rates to Marshall and Jefferson from New Orleans and from Atlantic seaboard territory via Gulf and rail found unreasonable to extent that they exceed aggregates of intermediate rates based on Shreveport. *Cities of Marshall and Jefferson, Tex., v. T. & P. Ry. Co.* 249 (254).

Application of through rates from Ruston, La., which exceed the aggregates of intermediate rates to and from Vicksburg, Miss., found not justified. *Thompson, Ritchie & Co. v. V., S. & P. Ry. Co.* 287 (290).

Rates on whisky and beer from New York and on whisky from Baltimore to Memphis higher than the aggregates of intermediate rates to and from National Cemetery and Springdale, Tenn., found unreasonable and complainants held entitled to reparation. *Hessig-Ellis Drug Co. v. L. & N. R. R. Co.* 459 (467, 468).

Rate on iron wire cloth from Cortland, N. Y., to Hopkinsville, Ky., found unreasonable to extent that it exceeded the aggregate of intermediate rates to and from Evansville, Ind. Reparation denied because no conclusive evidence could be produced as to who ultimately paid and bore the freight charges. *Forbes Mfg. Co. v. L. V. R. R. Co.* 566.

Former finding that the \$2 joint rate on sand from Mendota, Va., to certain points in North Carolina, including Statesville, which departed from the aggregate of intermediates' rule of the fourth section, was not unreasonable, affirmed on rehearing. *Slane Glass Co. v. V. & S. W. Ry. Co.* 586.

Joint rates on lumber from southern points to Madisonville, Ohio, through Oakley, Ohio, a point within the Cincinnati switching limits, found unlawful to extent that they exceed the aggregates of rates to and from Oakley. *Settle & Co. v. A. G. S. R. R. Co.* 592 (596).

Joint rate on ties from Bowie, La., to Eureka, Tex., violates the aggregate of intermediates rule, as it is not protected by any fourth section application. *Bowie Lumber Co. v. M. L. & T. R. R. & S. S. Co.* 609 (610).

Rate on mussel shells from Merom, Ind., to Columbus Junction, Iowa, found unreasonable to extent that it exceeded the aggregate of intermediate rates to and from Palestine, Ill. Reparation awarded and application for relief denied. *McKee & Bliven Button Co. v. I. C. R. R. Co.* 627.

The fact that the average of the lowest combination rates from points in the group involved is more than the joint rate can not be accepted as a justification therefor. *Id.* (628).

Rate on zinc ore from Magdalena, N. Mex., to East St. Louis, Ill., found unreasonable to extent that it exceeded the aggregate of intermediate rates to and from Argentine, Kans. Reparation awarded. *Granby Mining & Smelting Co. v. A., T. & S. F. Ry. Co.* 635.

Joint rate on lumber from Spring Hope, N. C., to Toronto, Ontario, found unreasonable to extent that it exceeded the combination rate based on Norfolk, Va. Reparation awarded. *Atlantic Lumber Co. v. A. C. L. R. R. Co.* 639.

THROUGH AND LOCAL—Continued.

- Tariff naming rate on enameled brick from South River, N. J., to Lynn, Mass., does not limit routing to any specific junction, and the through rate is therefore unlawful in that it exceeds the aggregate of intermediate rates to and from Boston. *American Enameled Brick & Tile Co. v. R. R. R. Co.* 653 (657).
- Former finding that joint rate on imported nitrate of soda from Pensacola, Fla., to Shreveport, La., was unreasonable to extent that it exceeded the sum of intermediate rates to and from New Orleans, La., affirmed on rehearing. *Virginia-Carolina Chemical Co. v. L. & N. R. R. Co.* 658.
- Former findings with respect to box shooks from Vicksburg, Miss., to Port Arthur, Tex., that the rate via Baton Rouge, La., was not unreasonable, but that the joint rate via Delta Point, La., which was the same via Baton Rouge, was unreasonable to extent that it exceeded the aggregate of intermediate rates, affirmed on rehearing. *Anderson-Tully Co. v. A. & V. Ry. Co.* 734.

THROUGH RATES.

- It is unlawful for shippers to bill shipments to an intermediate point and to rebill beyond merely to take advantage of an aggregate of intermediate rates lower than the through rate. *Lumber from Easton, Wash.*, 188 (189).
- Rates from Memphis to Texarkana and Shreveport can not be regarded merely as segments of through rates. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (235).
- Grain from country stations was accorded transit at Omaha and later at Chicago and reshipped thence to Atlantic seaboard territory. The applicable reshipping rate from the last transit point is the rate applicable on the date of the original movement and not the rate applicable under tariffs effective on date of beginning of movement from the prior transit point. *Board of Trade of Chicago v. A. A. R. R. Co.* 643, 652.

THROUGH ROUTES AND JOINT RATES.

- Established on soft coal from Oak Hills, Colo., to points in Kansas, Nebraska, Missouri, Iowa, and South Dakota, on the A., T. & S. F., M. P., C. & N. W., and C., St. P., M. & O. railways. *Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co.* 94.
- Short-haul paragraph of section 15 precludes the establishment of, in certain instances. *Id.* (100, 104, 112).
- Establishment of, not warranted, but this finding is without prejudice to complainants to show upon a proper record that same should be established. *Id.* (112).
- Orders previously entered which required the maintenance of joint rates on high explosives between points in the United States through Canada, rescinded because of the establishment of a through route and joint rate wholly within the United States. *Aetna Powder Co. v. Wabash R. R. Co.* 199 (201).
- From eastern Oregon points to various interstate destinations based on differentials over rates from Spokane, Wash., prescribed. *Eastern Oregon Lumber Producers' Asso. v. C., B. & Q. R. R. Co.* 316 (320).
- Under combination rates from Leeds, Ala., to Lafayette, La., a through route via New Orleans already exists; but the through rate is found unreasonable and carriers are required to establish a joint rate. *Lafayette Chamber of Commerce v. A. & V. Ry. Co.* 619 (621).
- Upon petition for establishment of, and for a physical connection between water line and electric line at Saugatuck, Mich., it is found that there is not such a case presented as to warrant requiring the construction of connecting tracks, nor to require the establishment of the through route or proportional rates prayed for. *Indiana Transp. Co. v. G. R., H. & C. Ry.* 757.

TON PER MILE REVENUE. *See also* DISTANCE.

It is a well-established principle of rate making that ton-mile earnings properly may decrease as length of haul increases. *Duffney Brick Co. v. B. & M. R. R.* 118 (124).

Rate yielding but 2.65 mills per net ton-mile can not be held unreasonably high. *Black Mountain Corp. v. L. & N. R. R. Co.* 153 (160).

While comparison shows that earnings under rates charged materially exceeded average earnings on all traffic, such a showing does not demonstrate that rate charged was excessive. *Pillsbury Flour Mills Co. v. G. N. Ry. Co.* 353 (359).

TRAFFIC MANAGER.

It is urged that the Commission is not in the attitude of a traffic manager. The act to regulate commerce, however, makes it the duty of the Commission to intervene between shippers and misdirected judgment of traffic officials where the result would so plainly produce an unlawful discrimination. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 523 (544).

TRANSCONTINENTAL RATES.

Upon rehearing, rates from eastern defined territories to points in the Willamette Valley of Oregon found justified. *Gile & Co. v. S. P. Co.* 193.

TRANSCONTINENTAL TRAFFIC.

Prevailing rates upon principal commodities carried wholly by water via Panama Canal or wholly by rail between Atlantic and Pacific ports of the United States, and carried by water by vessels not under United States registry from New York to Callao, Peru, and Valparaiso, Chile. Exhibit 4, Section (A). Relations between Carriers by Rail and by Water, 1 (73).

TRANSFER.

Transfer of coal from coal cars to box cars not found to be a service of transportation which defendant was required to perform and for performance of which by owner defendant could lawfully pay an allowance. *Lehigh Valley Coal Sales Co. v. L. V. R. R. Co.* 339 (340).

Charge for transferring citrus fruit from ventilated cars into refrigerator cars at Potomac Yard, Va., found justified. *Florida Citrus Exchange v. A. C. L. R. R. Co.* 325.

TRANSIT ARRANGEMENTS. *See also* COMPRESSION.

Advance in rates, effect of: That part of the tonnage which originated prior to the increase would take the lower rate, while that which originated after the increase would take the increased rate. *Board of Trade of Chicago v. A. A. R. R. Co.* 613 (619).

Concentration, compression, and reconsignment practices are unduly prejudicial to Memphis where through routes and joint rates are in effect via Memphis, while similar practices are in effect at St. Louis and East St. Louis, except where movement would entail a back haul requiring use of two cars inbound for one outbound. *City of Memphis v. C. I. & P. Ry. Co.* 256 (271, 272).

Dressing-in-transit: Retroactive application of transit arrangements at Columbus, Miss., and Reform, Ala., denied. *Meeds Lumber Co. v. A. C. Ry.* 337.

In general: A transit service is based on the theory that the transportation contract has not been completed, and that the entire shipment from point of origin through transit point or points to destination is the same in principle as if shipment had moved through without transit. *Board of Trade of Chicago v. A. A. R. R. Co.* 613 (651).

Milling-in-transit: Wheat shipped from South Chicago, Ill., to Louisville, Ky., there milled and re-shipped as products to Virginia points, found, upon rehearing, to have been overcharged. *Templeton & Sons v. C. I. & S. R. R. Co.* 355.

TRANSIT PRIVILEGES—Continued.

Milling-in-transit: When for any reason a commodity or its product is not forwarded from the transit point in accordance with provisions of transit tariffs, the inbound shipments become localized and subject to the legal rate from point of origin to milling point. *Pillsbury Flour Mills Co. v. G. N. Ry. Co.* 353 (357).

Milling-in-transit: Transportation of wheat from Duluth to Anoka to be milled in transit for Chicago was not, so far as appears, a part of a continuous or related through transportation service. Point of origin, destination of product, and rates charged beyond Duluth and Anoka are not shown, and shipments are to be regarded only as local traffic from Duluth to Anoka. *Id.* (357).

Milling-in-transit: Charges on stave bolts to Alexandria, La., for milling and re-shipment, found unreasonable. A transit provision which, through error or misunderstanding, is withdrawn or becomes inoperative for a short period and is subsequently restored can not be regarded in same light as a newly established transit arrangement and does not come within our rule against awards of reparation that are tantamount to retroactive application of such provisions. *Williams Stave Co. v. La. Ry. & N. Co* 553 (554-555).

Milling-in-transit: Grain moved from country stations to Omaha, where transit was accorded, thence to Chicago, where transit was again accorded, thence to Atlantic seaboard for export; Held, that the rate properly applicable from Chicago under rules in question was the rate in effect at time of shipment from the country point, and contention that the prior transit point must be taken to be the point of origin not sustained. *Board of Trade of Chicago v. A. A. R. R. Co.* 643.

Regulations: Cancellations of, at Buffalo, Toledo, and Detroit, and various other points, on grain when originating at stations on lines of certain of respondents' western connections, not justified. Disagreement as to divisions must not cast unjustified increased charges on shippers. *Grain Transit Rules at Buffalo, N. Y.*, 580 (582).

Stoppage in transit: Charges collected on basis of carload rates to Montgomery, Ala., plus less-than-carload rates beyond, on fresh meats and packing-house products from North Fort Worth, Tex., and East St. Louis, Ill., to Columbus, Ga., stopped at Montgomery for partial unloading, not found unreasonable. *Swift & Co. v. M. & O. R. R. Co.* 701.

Transit defined: Transit is a stop-over service performed at an intermediate point in the general direction of the ultimate destination, and does not properly include an out of line or back haul in order to include some point in a different direction. If defendants offer transit service at rates prescribed, a reasonable charge for such service may be made. *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co.* 497 (508).

TRANSPORTATION.

Transfer of coal from coal cars to box cars not a transportation service which defendant was required by the act to perform. *Lehigh Valley Coal Sales Co. v. L. V. R. R. Co.* 339 (340).

TRAP CARS.

Trap cars are brought as fully and completely within the terms of defendants' demurrage tariffs as cars used in transportation under tariffs which make the usual general reference to demurrage tariffs; and refusal to include trap cars within the terms of the average agreement is unauthorized. *Woolson Spice Co. v. P. Co.* 583 (584, 585).

